LABOUR CODE

Vol. I

The Bombay Industrial Relations Act

(Act No. XI of 1947)

with

The Industrial Disputes Act

(Act No. XIV of 1947—Central)

With Standing Orders, Rules, Notifications, Bombay Industrial Disputes Act etc.

BY

CHAMPAKLAL C. BHATT, B. A., LL. B., PLEADER.

&

GANPATISHANKER P. VYAS, B. SC., LL. B., PLEADER.

Sometime lecturer, Law College, Ahmedabad.

WITH A FOREWORD BY

HON'BLE MR. JUSTICE G. S. RAJADHYAKSHA I. C. S.
Judge of the High Court of Judicature
at Bombay and [redacted]-Member
Industrial Court.

CHANDRAKANT CHIMANLAL VORA
LAW PUBLISHERS,
GANDHI ROAD, AHMEDABAD.
(INDIA)

First Edition June. 1947

Published by MUGATLAL D. DUBAL, and printed at the Jashvantsinh Printing Press, Limbdi, (Kathiawar).

Dedication:
To those who dedicated
their lives
to the Cause of Labour.

GENERAL CONTENTS.

PART I.

PART II.

FOREWORD

At the request of Mr. C. C. Vora, Proprietor of Messrs. Vora and Company, Law Booksellers and Publishers, Ahmedabad, I am glad to have had this opportunity of writing a Foreword to the First Volume of the Labour Code which Mr. Vora proposes to publish. It is an ambitious scheme. The First Volume deals mainly with the Bombay Industrial Relations Act 1947. The first part of the Volume contains the Act with detailed notes under each section and the second part contains Standing Orders, Notifications and the text of the Industrial Disputes (Central) Act with short notes. In subsequent Volumes, it is the intention of Mr. Vora to publish the Industrial Disputes (Central) Act, the Factories Act, the Payment of Wages Act and the Workmen's Compensation Act with exhaustive commentary thereon. The last Volume will, I am informed, contain all other minor Acts dealing with labour matters. The only other similar publication I know of is "Labour and Factory Legislation in India" edited by Mr. H. M. Trivedi and published in one volume by N. M. Tripathi, Limited. But apart from a very useful introduction, that book contains only the text of Acts, Rules and Notifications. The present attempt of Mr. Vora to bring out a complete Labour Code with commentary is a commendable enterprise.

The present Volume concerns itself almost exclusively with the Bombay Industrial Relations Act, 1947. That Act has only recently been placed on the statute book and will shortly be brought into force. This Act stabilises, and in certain directions expands, the tentative experiment initiated in this Province by the enactment of the Bombay Industrial Disputes Act, 1938, which it replaces. This latter Act aimed at attaining settlement of industrial disputes and avoiding strikes and lock-outs, as far as possible, as a means of obtaining changes in industrial relations and of redressing grievances. It gave representative status to certain unions and made it compulsory for parties to go through a proeess of conciliation before resorting to the extreme step of a strike or a lock-out. The day-to-day relations between the employers and the employees were regulated by Standing

Orders settled by the Industrial Court. No one would wish to deny to Labour the ultimate right to obtain the redress of their grievances by resorting to a strike; but it is equally obvious that recourse to such methods is frought with serious consequences to the employers and the employees and in many cases, with grave inconvenience and harm to the general public. It was therefore the object of the Bombay Industrial Disputes Act to bring about a settlement of differences between the parties by bringing them together, if necessary, in the presence of a conciliator and to make strikes and lock-outs illegal unless and until an earnest attempt was made to settle the differences in a friendly manner. In a very large number of cases, the machinery constituted by the Act provided a useful means of settling such disputes, as is obvious from the large number of agreements and settlements recorded in the pages of the Bombay Labour Gazette during the last 8 or 9 years that the Act has been in force. Arbitration was not made compulsory save when the Provincial Government so directed in certain exceptional cases. The Industrial Court was given power to declare whether any changes, strikes or lock-outs were illegal. Any declaration that they were illegal entailed the risk of a prosecution of the party at fault. Having been a Member of the Industrial Court from its very inception, it is perhaps permissible for me to say that the machinery provided by the Act has proved useful for settlement of disputes or at least has provided a common meeting ground for the parties before taking the extreme step of a strike or a lock-out. As was only to be expected in a pioneer legislation of this kind, several anomalies and defects—both in the drafting and working of the Act—came to the notice of the Industrial Court and these have been pointed out from time to time in the judgments of the Court which have also served as authoritative expositions on the interpretations of the various provisions of the Act.

The experiment made in the enactment of the Bombay Industrial Disputes Act is now sought to be extended, and various defects in the drafting and working of the Act have been attempted to be set right. In an endeavour to foster the growth of the Trade Union Movement on responsible lines, a new category of "Approved Unions" has been created. Such unions will not only be entitled to special privileges but will also be fastened with certain responsibilities.

The provision for the setting up of Joint Committees of representatives of the employers and employees in various occupations and undertakings will serve to maintain a direct and continuous touch between the employers and employees and to secure speedy consideration and disposal of the difficulties which arise in the day-to-day working. The Industrial Court has been relieved of a large part of minor judicial work. Applications for alterations in the Standing Orders will now be made to the Commissioner of Labour. Similarly applications for a declaration that a change, strike or lock-out is illegal will be made to the Labour Courts. These Courts, will not only have power to grant such declarations but will also be clothed with authority to give directions to implement them. Breaches of the provisions of the Act will no longer be punishable by ordinary Criminal Courts ; but the Labour Courts will have the necessary jurisdiction to decide these matters. The Industrial Court will be the final Court of Appeal from the decisions of the Labour Courts and the Labour Commissioner and will have original jurisdiction principally in matters submitted to its arbitration or referred to it for opinion on points of law. Arbitration will still be voluntary, but every conciliator will have to ascertain before concluding his proceedings whether the parties are willing to submit their dispute to arbitration. Provincial Government will, however, have power to refer a dispute between employees *inter se* for the arbitration of the Labour Court or the Industrial Court , and in some special cases, a dispute between the employers and employees to the arbitration of the Industrial Court. Strikes and lock-outs with respect to matters mentioned in Schedule III or regulated by Standing Orders (Schedule I) will be illegal as such minor matters can be settled by the Labour Courts. Strikes or lock-outs will be legal only with respect to matters covered by Schedule II if the preliminary process of conciliation has proved infructuous. Those engaged in strikes and lock-outs declared to be illegal will incur no penalty if they call off the strike or lock-out within 48 hours of the declaration by the Labour Court or the Industrial Court as the case may be. The Act also makes provision enabling the Provincial Government to set up a Court of Inquiry and to maintain a record of Industrial matters.

In view of these extensive changes, an edition of the Act explaining in detail the implications of these changes would obviously serve a very useful purpose. I have read the proof of this edition. The editors Mr. C. C. Bhat and Mr. G. P. Vyas have taken considerable trouble in bringing it out. The decisions of the Industrial Court—right upto April 1947—have been accurately summarised under the appropriate sections and their bearing on the new provisions has been carefully explained. I have much pleasure in commending the book to all those whose business it is to assist in the administration of the Act and I wish the publisher every success in his new venture.

Bombay,
23rd June 1947.

G. S. RAJADHYAKSH.

PREFACE

The Bombay Industrial Relations Act has been based upon the Bombay Industrial Disputes Act of 1938, which was initiated by the Congress Government. That Act had been a most controversial piece of legislation. A large number of people have denounced it as a most retrograde enactment, trenching upon Labour's inalienable right of strike, tending to preserve *status quo* and thereby destroying Labours' chances of improving their condition. It has been dubbed by them as a 'Black Act' ; while other equally important body of men have hailed it as an enactment most beneficial to Labour, conferring upon the employees valuable rights and ushering in an era of industrial peace and progress. The vehemence of denunciation and appreciation may be attributed to the two conflicting ideologies. The Act gave statutory recognition to the principles for which Gandhiji and the Congress Government stand, namely, avoidance of strikes and peaceful settlement of industrial disputes by conciliation, and if possible by arbitration. Those of this way of thinking, hail it as a splendid and beneficial enactment, while those who believed that it is impossible to obtain concessions from the employer by peaceful negotiations, that each one of the present privileges enjoyed by the Labour had been wrenched from an unwilling employer by hard struggle and therefore the curtailment of the right of strike is a great dis-service to the workers' cause. In short, those who believe in class-conflict look askance upon the Act. Thus this Act or its predecessor, the Bombay Industrial Disputes Act are beneficial or harmful according to one's own angle of vision. We do not want to, nor is it our business to delve deep into the merits or demerits of the Act. For it is quite possible to hold sincerely conflicting opinions about the beneficiality of these enactments. The present authors themselves holding different political opinions as they do, are themselves divided on the ultimate beneficiality of the Act to the workers at large. But whatever opinion one may hold, it must be admitted that this Act, most intimately affects the life of the worker in his relations with the employer and any one who is concerned with Labour or Industry cannot afford to have less than intimate knowledge of the Act. The Act, with its technical terms, artificial system of representation and novel principles, looks rather bewildering to a lawyer ; much more should it look so to other persons. But the principles which it embodies are in the last analysis simple. They are these: strikes and lock-outs as a means for enforcing demands are an evil. They cause untold hardships to the workers themselves. Therefore

they must be avoided as far as possible. This was sought to be accomplished *inter-alia* by the following provisions in the Bombay Industrial Disputes Act:—

1. Provision was made for framing of rules called Standing Orders regulating matters of day to day importance such as dismissal or discharge, leave, shift working etc. The employer was bound to act in accordance with these Standing Orders and penalty was provided for breach thereof. On the other hand strike was forbidden in respect of the matters regulated by the Standing Orders.

2. As all the industrial disputes arise from a desire of change in the existing state of things, either the employees may desire increase in wages, or decrease in hours of work, or certain amenities not provided for hitherto or the employer may want to decrease wages or increase the hours of work or that one man should do the work that two men are doing hitherto, in short a change in the existing state of things ; and if the other party does not agree to it an industrial dispute arises. The object of the Act was that the parties should not resort to a strike or a lockout all at once to enforce the desired change. Therefore it was made compulsory that the notice of the proposed change in respect of certain specified industrial matters must be given to the other party so that the other party may agree to it, if it does not deem it objectionable. If the parties cannot reach an agreement themselves, the matter must be brought before a Government Officer called the Conciliator who would try to bring about a settlement of the dispute. If the parties reach an agreement or settlement, so far so good. If the conciliation proceedings fail then the employer would be entitled to make a changes or declare a lockout and the employees would be at liberty to resort to a strike to enforce or resist, the proposed change as the case may be. Thus notice of change and conciliation proceedings were made compulsory under the Act. If the parties declare a strike or a lockout or make a change without going through the conciliation proceedings, it would be illegal and punishment was provided for it.

3. Provision was made for reference of the disputes to arbitration. Arbitration was voluntary and neither party was bound to refer the disputes to arbitration. But later on S. 49. A was added, which empowered the Provincial Government to refer an industrial dispute to arbitration under certain circumstances, such as likelihood of breach of peace or serious disorder etc., irrespective of the consent of parties. It provided for compulsory arbitration.

4. Industrial Court was established to deal with the matters arising under the Act.

5. Provision was made for representation of the employees in proceedings under the Act as employees being numerous a method of their representation was necessary.

The Bombay Industrial Disputes Act was applied to the Textile Industry and only in the year 1946 it was made applicable to the Banking Industry and passanger transport service by tram or omnibus in the City of Bombay. It was in force for nine years and it has been replaced now by the present Act. The present Act has been built on the same foundations and certain defects which were experienced in the actual working of the Act have been sought to be remedied. Amendments and innovations have been made to carry out the underlying object viz. avoidance of strikes and lock-outs and peaceful settlement of industrial disputes. The important changes, among others, are:-

(1) Establishment of Labour Courts. With the Industrial Court which is a court of appeal, reference and revision, they form a complete Labour Judiciary.

(2) Labour Courts have been invested with the power to decide as to the propriety of an order passed by the employer under the Standing Orders. Power is thus conferred upon the Labour Courts to practically sit in appeal over the orders passed by the employer. Employers' powers have thus been controlled by this provision.

(3) Labour Courts have been invested with power to hear and decide upon the matters such as amenities, equipment etc.- matters not involving very substantial issues-and the employer would be bound to act in accordance with the decision of the Labour Court. Strike or lock-out in respect of such matters is totally banned.

(4) By grant of certain privileges, unions whose rules provide that strike shall not be resorted to by it unless all methods provided by the Act for settlement of disputes have been exhausted and who offer to submit every such industrial dispute to arbitration, are offered special concessions. Such unions are to be called Approved Unions.

(5) Fundamental changes in the system of representation of employees.

(6) Enhancement of the power of the Government to make compulsory arbitration.

(7) Setting up of Joint Committees of the representatives of employers and employees to discuss jointly the proposals emanating from either side.

The very perusal of the above provisions makes it obvious that those who criticised the Bombay Industrial Disputes Act have greater reason to criticise and denounce the present Act while those who welcomed the former Act would hail the present Act as a great step forward in the right direction. In the conferment of privileges to Approved Unions and the system of representation, the critics do see a scheme or a device to oust the unions holding contrary ideologies, while in the power of the Government to make compulsory reference to arbitration they see a death blow to the trade union movement. Perhaps this provision for compulsory arbitration against which even the Royal Commission on Labour had expressed definite opinions has provoked the greatest criticism. We have given some of the arguments against and for this provision in our comments under S. 73.

Another provision which has provoked great criticism is the method of representation of the employees in the proceedings under the Act. It is evident that some method must be devised for their representation, for, there must be some one to act and to enter into collective bargaining on their behalf. It is provided under the Act that any union which has got a membership of 15 per cent. or more of the total number of employees in a local area, can be registered as a Representative Union, and such union shall be the representative of *ALL* employees in the local area whether they are its members or not, whether they desire or not, and even if they are quite opposed to it and its methods. The agreements, settlements or awards to which such a union is a party would be binding upon all the employees including non-members. Secondly there can be only one registered union for an industry in a local area and if there are two unions having the requisite percentage of membership the union having greater membership will be registered as a Representative union and will have the right to represent all the employees in the industry in such local areas. Thus if there are two unions, one with 20 per cent. membership and the other with 19 per cent. membership the former will be registered as a Representative Union, and will have the right to represent all the employees in the industry and would be eligible to enjoy the other privileges of a Representative Union while the other union will have no right whatever.

Even if in a particular mill or undertaking as it is called under the Act, all the employees belong to the other union and none belongs to the Representative Union it is the Representative Union which will be representative of these employees. In cases where there is a Representative Union, even the Labour Officer-charged with the duties of watching the interests of Labour and to promote harmonious relations between employers and employees-cannot investigate except at the requtes

of the Representative Union the grievances of the workers and represent the same to the employer the very duties imposed upon him under the Act. The result would be that the workers will be forced to resort to the Representative Union for investigation and redress of their grievances. It is feared by the critics of the Act that the object and effect of this artificial system of representation would be to drive out other unions from the field. For such non-representative union will have no scope for carrying on its activities. It also looks rather astounding to a lawyer that a union wich represents only 15 per cent. of employees would be a representative of other 85 per cent. of the employees who are not members thereof and may rather be opposed to it or its methods. The reply given to it is that the Labour is disorganised in India, the majority of the workers are indifferent and are not conscious of their interests nor of the necessity of organising themselves and therefore a union which has organised 15 per cent. of employees would be fit to represent all other employees. Also this right to represent the employees will encourage the organisation of Labour in that the workers will find that the Union has great power and therefore it would be best to interest themselves in it.

Whether one may be a critic or an admirer of this legislation, it must be recognised that it is a great experiment in the settlement of industrial disputes and regulation of employer-employee relations. It will have for good or bad far reaching influence on the industry and labour-movement. Only the future can tell us of the wisdon or otherwise of this legislation. The Act applies in the first instance to the industries to which the Bombay Industrial Disputes Act applied viz., the Textile Industry and the Banking Industry and passenger transport service by omnibus and tram and electric supply in the City of Bombay. The Government can by a notification apply this Act to any other industry. The definition of industry is very wide and includes even agriculture within its scope. Thus this Act will have increasing application and may in course of time cover all industries and govern and regulate the employer and employee relations in all walks of life.

Turning to the present book, we have digested all the important decisions of the Industrial Court, have given copious extracts from the judgments of the Court in order that the reason underlying the decision may become intelligible to the reader. For, we understand that the many who will have the occasion to use this book may not have at hand the Bombay Government Gazette or the Bombay Labour Gazette in which the decisions of the Industrial Court are published. We also know that the Central Government has very recently passed an Act—The Industrial Disputes Act—embodying the same principles. Also several other Provincial Governments have introduced bills embodying the the same principles, and therefore the decisions of the Bombay Industrial Court will

afford a useful guidance in interpretation of these statutes. We have borne in mind the requirements of the persons-lawyers, industrialists, trade unionists etc, in those provinces in compiling this book. In order that the decisions may be properly understood, we have given the text of the Bombay Industrial Act, 1938 in the Appendix. We have noted the changes effected in law under appropriate sections. We have also given the comparative table of the corresponding sections of both the Acts. The rules framed under the Act, forms and notifications have also been given. The Standing Orders settled under the Bombay Industrial Disputes Act are to remain in force unless there is an alteration under the provisions of this Act. Therefore we have given the Standing Orders in Appendix, with exhaustive digest of case law. In short we have attempted to do all that can be done to make the book exhaustive and useful to all the varieties of persons who will have occasion to use it.

We are greatly indebted to Hon'able Mr. Justice G. S. Rajadhyaksha, Judge, High Court of Judicature at Bombay and Ex-Member of the Industrial Court, Bombay for condescending to write a foreword to this humble attempt of us. His Lordship has been a Member of the Industrial Court from its inception and has contributed to an immense degree to clarify, define and develop the principles of the Industrial Jurisprudence by his learned and lucid judgements. We deem it a great privilege to have his foreword to this book.

Lastly we have to thank our friend Mr. Fulsinhji Dabhi M. L. A., for his kindness in supplying us with a copy of the Bill and helping us in diverse other ways. But for his help it would not have been possible for us to prepare this compilation so early. We are also grateful to Mr. Kanubhai K. Machhar B. A., LL. B., for undertaking and going through the arduous task of proof reading and other help rendered by him. We offer our thanks to various other friends who helped us with various useful suggestions. We cannot forget the very valuable assistance rendered to us by that excellant compilation the "Digest of the Industrial Court cases" by Mr. K. R. Wazkar, the able secretary of the Industrial Court. But for this book our task would have been increased hundredfold. Inspite of all the attempts, the Printer's Devil has had his own way and unfortunately some important mistakes in printing have crept in. We therefore, request the readers to see the errata before reading the book.

With all our attempts at perfection we are painfully aware of our own short comings and any suggestion from any reader will be gratefully received and considered.

Dated, 1ts, July 1947
Ahmedabad.

Champaklal C. Bhatt
Ganpatishankar P. Vyas

COMPARATIVE TABLE OF SECTIONS

Comparative table of the Sections of the Bombay Industrial Relation Act and the Bombay Industrial Disputes Act 1938 :

Sections of B. I. R. Act.	Sections of B. I. D. Act.
1	1
2	2
New 3 (1)	...
New 3 (2)	...
3 (3)	3 (1)
3 (4)	3 (2)
3 (5)	3 (3)
3 (6)	3 (4)
3 (7)	3 (5)
3 (8)	3 (6)
3 (9)	3 (7)
3 (10)	3 (8)
3 (11)	3 (9)
New 3 (12)	...
3 (13)	3 (10)
3 (14)	3 (11)
New 3 (15)	...
3 (16)	3 (12)
3 (17)	3 (13)
3 (18)	3 (14)
3 (19)	3 (16)
New 3 (20)	...
New 3 (21)	...
3 (22)	3 (17)
3 (23)	3 (18)
3 (24)	3 (19)
3 (25)	3 (20)
3 (26)	3 (21)
3 (27)	3 (23)
New 3 (28)	...
3 (29)	3 (24)
3 (30)	3 (26)
3 (31)	3 (28)

	3 (32)	3 (29)
	3 (33)	3 (30)
	3 (34)	3 (31)
	3 (35)	3 (32)
	3 (36)	3 (33)
New	3 (37)	...
	3 (38)	3 (34).
New	3 (39)	...
New	4	...
	5	4
	6	21
	7	23
	8	22
New	9	...
	10	24
	11	5
	12	6
	13	7
	13 (1)	12
	13 (2)	11 (1)
	14	8
	15	9
	16	10
	17	13
	18	14
	19	15
	20	18
	21	20
New	22	...
New	23	...
New	24	...
New	25	...
New	26	...
	27	74
New	28	...
New	29	...
	30	3 (29)
	30 (Proviso 1.)	31
New	31	...
New	32	...
	33	75
	34	25
	35	26 (1), (2), (3).

	36	26 (4), (5), (6).
	37	27
New	38	...
New	39	...
	40	26 (8)
New	41	...
	42	28
	43	29
	44	30
	45	32
	46	73
New	47	...
New	48	...
New	49	...
New	50	...
New	51	...
New	52	...
New	53	...
	54	34
	55	35
	56	36
	57	37
	58	38
	59	39
	60	40
New	61	...
	62	41
	63	42
New	64	...
New	65	...
	66	43
	67	44
	68	45
	69	47
	70	48
	71	49
New	72	...
	73	49 (A)
	74	50
	75	51
	76	52
New	77	...
New	78	...

New	79	...
New	80	...
New	81	...
New	82	...
New	83	...
New	84	...
New	85	...
New	86	...
	87	53
New	88	...
	89	54
	90	56
New	91	...
	92	57
	93	58
	94	59
	95	60
	96	61
	97	62
	98	63
New	99	...
New	100	...
	101	64
	102	65
	103	66
	104	67
	105	68
	106	69 (1)
	107	69 (2)
	108	70
	109	71
New	110	...
New	111	...
New	112	...
	113	72
	114	76
New	115	...
	116	77
	117	78
	118	16, 40 (2) 59 (2)
	119	80
	120	82

	121	83
New	122	...
	123	84
	Schedule I	Schedule I
	Schedule II	Schedule II
New	Schedule III	...

STATEMENT OF OBJECTS AND REASONS.

The Bombay Industrial Disputes Act of 1938 has been in force for the last eight years. The provisions of the Act have been availed of extensively by the employers as well as the employees in the textile industry, to which alone the Act has so far been applied. It has to a very large degree served the purpose for which it was intended. With the passage of years and on the strength of the experience gained during this period it has, however, become necessary and possible to build further on the same foundations.

This Bill cuts new ground in several directions.

(1) Government seeks to achieve its declared object of facilitating the organisation of labour by creating a list of approved unions, introducing a category of primary unions, removing for the purpose of registration the condition relating to recognition by the employer, bringing down the minimum membership for a representative union from 25 to 15 per cent. and reducing the qualifying period from six to three months. An approved union is invested with substantial privileges but is also required to undertake a corresponding set of obligations in the interests of the stability of industry and the progress of sound trade unionism. Even a small beginning in this direction in the shape of a primary union having as members 15 per cent. of the employees in a single undertaking is given a place and a function in the new scheme. The range of activities of a registered union is enlarged by enabling it to act as a representative of employees on behalf of non-members who may choose such a union for the purpose of representing them in any proceedings.

(2) Provision is made for the maintenance of a list of approved unions, and all registered unions that satisfy among others certain conditions regarding the regularity of meetings of the executive committee, Government audit of their accounts, and the avoindace of resort to strikes so long as means of settlement and conciliation are available under the Act will be placed on the list. Approved unions will derive substantial advantages under the Act including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expense in important proceedings before the Labour Court and the Industrial Court.

(3) The provisions relating to Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and lock-outs occurring over a series of years has revealed the fact that a large proportion of stoppages arises out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one-sided exercise of discretion in dealing with them, creates a large volume of bitterness and discontent which lead to frequent disturbances of the peace of the industry and cause serious loss of production and workers' earning.

The conciliation procedure in the Act of 1938 has not been found to be quite suitable for dealing with disputes of this character, both because of

the length of time which the proceedings take and the lack of finality at the end of the proceedings. A remedy for this will be found in the Labour Courts which will be instituted under the new Act, to ensure impartial and relatively quick decisions in references regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up.

The new clauses relating to the manner of modification of standing orders are designed to secure a similar purpose.

(4) The maximum duration of conciliation proceedings has been very much curtailed and substitutes for a notice of change have been recognised to avoid delay in initiating the actual work of conciliation.

(5) Provision is made for setting up joint committees of representatives of employers and employees in various occupations and undertakings in an industry. This is a device for establishing direct and continuous touch between the representatives of employers and workers and for securing speedy consideration and disposal of the difficulties which arise from day to day in employer and employee relations. This is a familiar arrangement in the United Kingdom and in several other countries and its adoption has been recommended by the Royal Commission on Indian Labour.

(6) The clause relating to references of disputes to the Industrial Courts at the instance of Government is redrafted to give it a wider field for the exercise of discretion. Such a course has been rendered necessary by the frequent calls on Government, during recent years, from employers as well as employees, for compulsory adjudication of disputes.

(7) Apart from reducing the penalties for going on or continuing on an illegal strike the Bill removes an ambiguity regarding the circumstances in which the penalties in consequence of an illegal strike arise.

(8) Provision is also made to enable Government to set up a Court of Enquiry, when this procedure is considered appropriate in a particular situation or dispute in an industry.

(9) The maintenance by Government of a record of conditions, usages and conventions relating to labour in each undertaking will be compulsory. This information will prove helpful to the authorities under the Act in setting disputes and determining whether a certain change was illegal or not.

(10) The powers and duties of the Labour Officer are expanded so as to enable him to function more efficiently.

(11) Annual election of representatives of employees is provided for in lieu of the present system of election of representatives for a particular dispute only.

There are in addition a number of minor changes in the wording of several clauses to surmount certain legal and administrative difficulties which have been encountered in the working of the Act of 1938.

(12) In view of the scope of the Bill which embraces a much wider

field than the Bombay Industrial Disputes Act, 1938, it has been entitled the Bombay Industrial Relations Bill.

5th September 1946.

(Signed) Gulzarilal Nanda,
By order of the Governor of Bombay
K. M. Chitnvis,
Assistant Secretary to the Government
of Bombay,
Legal Department.

Poona, dated 5th September 1946.

THE BOMBAY INDUSTRIAL RELATIONS ACT 1947.

CONTENTS OF SECTIONS.

CHAPTER I.

PRELIMINARY.

CHAPTER II.

Authorities to be constituted or Appointed under this Act.

CHAPTER III

Registration of Unions.

CHAPTER IV.

Approved Unions.

CHAPTER V.

Representatives of Employers and Employees, and appearance on their behalf.

CHAPTER VI.

Powers and duties of Labour Officer.

CHAPTER VII.

Standing Orders.

CHAPTER VIII.

Changes.

CHAPTER IX.

Joint Committees.

CHAPTER X.

Conciliation Proceedings.

CHAPTER XI.

Arbitration.

CHAPTER XII.

Labour Courts.

CHAPTER XIII.

Court of Industrial Arbitration.

CHAPTER XIV.

Illegal Strikes and Lock-outs.

CHAPTER XV.

Courts of Enquiry.

CHAPTER XVI.

Penalties.

CHAPTER XVII.

Record of Industrial Conditions.

CHAPTER XVIII.

THE
BOMBAY INDUSTRIAL RELATIONS ACT.

ACT XI OF 1947.

(First Published after having received the assent of the Governor General in the Bombay Government Gazette on the 15th April 1947.)

An Act to regulate the relations of employers and employees, to make provision for settlement of industrial disputes and to provide for certain other purposes.

WHERE AS it is expedient to provide for the regulation of the relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes, it is hereby enacted as follows:—

Preamble:

Law enterior to the Bombay Industrial Relations Act.

With the advent of large scale industries in Europe, slowly and slowly there emerged conditions which necessitated the regulation of relations between employers and employees. To day most of the countries in the world have more or less comprehensive legislation regulating these relations.

India is in the course of being industrialised. Large scale industries have been established and there is a vast scope and probability for further development and these conditions have necessitated the legislation to regulate the relations between the employers and employees. The first of the Acts was the All India Trade Disputes Act of 1929. This Act has rarely been used. In 1934 the Government of Bombay passed the Bombay Trade Disputes Conciliation Act of 1934. There was nothing in this Act making it obligatory on the parties to a Trade Dispute to endeavour to obtain a settlement of it by conciliation before resorting to a strike or lockout. This defect was sought to be remedied by the enactment of the Bombay Industrial Disputes Act (Act XXV of 1938.) This was an important and extensive piece of legislation. But it was made applicable only to the textile industry. However it was availed of extensively by the employers and employees, The Industrial Relations Act has been based on the said Bombay Industrial Disputes Act. This Act however cuts new ground in several directions. It embraces a much wider field then the Bombay Industrial Disputes Act.

(2) Scope and applicability of the Act.

The Act as the preamble shows consolidates and amends the law as relating to the settlement of Industrial Disputes. The object of consolidation is "to collect the statutory law bearing upon a particular subject and to bring it down to date in order that it may form a useful act applicable to the

circumstances *existing* at the time when the consolidating act was passed".[1]

In the case therefore of a consolidating statute the constructions must be not with reference to the circumstances existing at the time of the preceding Act but in relation to those existing at the time of the consolidating Act itself,[2] and the law thenceforth be ascertained from that enactment itself instead of being searched for in prior decisions[3]. A reference to earlier case law is however permitted for construing the word of the statute but not for the purpose of adding something to it.[4] But in applying a consolidating Act, statutes not expressly repealed should be held to continue in force without modification.[5]

The act applies to all matters referred to in the Act except that it does not affect any special or Local Law or any specific form of procedure prescribed by or under any law for the time being in force. When there is a conflict between this Act and a special Law the latter prevails over the former on the principle that the special law prevails over the general.[6] In the absence of certain provision in allied Act, however, on any particular matter the provisions of that Act will apply.[7] It must, however, be applied with reference to circumstances peculiar to those matters.[8]

The preamble of the Act shows that it is not merely a fragmentary enactment but a consolidatory one, repealing all other previous Acts on the subject. The preamble read with some other important sections of the Act make it clear that the Act does profess to consolidate the law on subject in a complete statute and that it is introduced with a view to create new rules and principles. It may be observed that the Act so far as it goes must be regarded as exhaustive and in any case covered by the Act, the provisions of the Act must be applied. The wording of Sections must be regarded as a proper guide in all matters specifically dealt with by the Act.

Interpretation of the Act :—

During the course of the actual administration of the Act important points are likely to arise, the judicial decision of which would depend on the interpretation of the provisions of the Act. Based on experience of the law Courts, and consistent with the principle of justice, equity and good conscience certain fundamental principle rules have now been laid down relating to interpretation of a statute. The fundamental principle of interpretation of a statute is that it should be construed according to the intent of the legislature which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case, best declare the intention of the Law-giver. But if any doubt arises from the term employed by the legislature, it has always been held a safe

1. 22 Ind. App. 107 (P. C.)
2. 22 Ind. App. 107 (P. C.)
3. 23 Ind. App. 18 (P. C.)
4. 46 Mad. 605 (F. B.)
5. 52 All. 619 (F. B.)
6. (42) 29 A. I. R. 1941 Cal. 49-60
7. 16 Ind. App. 156 (P. C. P.)
8. (84) 9 Bom. 241 (244) D. B.

means of collecting the intention to have recourse to the preamble.[1] There is another rule, however, which must not be overlooked in this connection. It is to the effect that the court must not create or imagine an ambiguity in ths aid of the preamble. To do so would in many cases frustrate the enactment and defeat the general intention of the legislature.[2]

As a general rule, the intention of the legislature is to be ascertained from the language it has preferred to use in the Act. The Court's function is not to surmise what the legislature meant but it has only to ascertain what the legislature has said it meant. The speculative opinion of the intentions of the legislature even on matters it has omitted to enact should not guide the Law Courts in the interpretation of the Act. In a court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable and necessary implication.[3]

One of the most important rules of construction is the *rule of literal construction.* If there is nothing to modify, nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the word and sentence.

The plain, obvious, grammatical and ordinary sense of the word is to be adhered to, unless that meaning would be in direct conflict with the rest of statute and create an absurdity. In the latter case the obvious, grammatical sense of the word may be modified so as to avoid the absurdity or inconsistency and no further.

The Courts should not zealously volunteer the interpretation of the provisions of the statute specially when the meaning attached to the language is plain and unambiguous. For such a zealous undertaking on the part of a Law-Court would go to transform its status from that of an administrator of law to that of a law-giver. To add, amend or supply any deficiency in the status even though an apparent one and whether covered intentionally or by error is no concern of law-Courts.

The scope for the interpretation of the provisions of a statute by a law-court arises only when the meaning of the provisions of the statute is ambiguous, absurd or repugnant or inconsistent with the rest of the statute and also sufficiently flexible to admit interpretation. In thes cases those provisions may be construed which if less correct grammatically are more in harmony with the intention of the lagislature.[4]

In the above circumstance to arrive at a real meaning, it would not only be perfectly legitimate and judicial for the law court, but be incumbent on it to get an exact conception of the aim, scope and object of the whole Act. The true meaning of a passage is that which harmonises with the subject and

1. Commisioners for Income-tax V. Penosal (1591) A. C. 531 per Lord Holsbury, L. C. at page 543

2. See per Lord Davey in Powall Vs. Hempton Pork Race Course Co. (1899) Ac. 143. 185.

3 (1897) A. C. 22. 38 Solomon v. Solomon & Co.

4 Moxwel on interpretation of statutes 7th Ed. P. 17 (1933) 11 Rang. 192.

with every other passage of the statute and it is well settled rule that the same words are to be primafacie construed in the same sense in the different parts of the same statute.[1]

Construction of a particular piece of the statute must be harmonious with the remaining portion of the statute, and it should not be construed as a detached piece of legislation without sufficient regard to the setting in which it is found.

Reference to the proceedings of the legislature.

In the case of the Administration general V Pre, Lal Mallik 22. Ind. App. 107. P. C. their Lordships of the Privy Council have laid down definitely that it is not competent to refer to the proceedings of the legislature as legitimate *aids* to the construction of the *statute*. This is in consonnance with the principle stated above, that when the language is plain no extraneous matter should be taken into account in the interpretation of the Act. Previous law contrary to this ruling cannot be considered good law after the date of this decision. Where the language is doubtful or ambiguous or in circumstances stated above such proceedings may of course be looked into. 8 Bom. 241, (246,247) D. B.

The proceedings of the legislature would include:—

1. The statement of objects and reasons.
2. The report of the select committee.
3. The draft stages of the Bill.
4. The debates in the legislature.

Retrospective effect:—

Every statute which deals with substantive law or affects or impairs vested rights must be presumed not to have a retrospective operation unless the language clearly supports a contrary conclusion.[2]

Reference to previous law:—

Another rule of construction which must not be overlooked in dealing with an Act, like the present one is that the proper course is in the first instance to examine the language of the statute and to ask what its natural meaning is, uninfluenced by any consideration derived from the previous state of the law and not start with the inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the word of enactment will bear an interpretation in conformity with this veiw.[3]

Headings:

The heading of a chapter can be looked for the purpose of interpreting a section in the statute.[4]

1. Khan gul V Lokha Singh. A I R. (1918) Lah. 609. F. B
2. Maxhullon interpretation of statutes 7th Ed. P 186
3. Narendra Nath Vs. Kamlabasini (1886) 23. Cal. 563. P C.
4. Dwarkanath V Tafozer (1917) 44 Cal. 267.

Marginal Notes.

It has been observed by the Judicial Committee of the Privy Council, that marginal notes to the Sections cannot be referred to for the purpose of construing an Act of the legislature,[1] but also see Ram Saran V Bhagvat Prasad 1929) 51 All. 411. (F. B.)

There is no reason, however, why marginal notes may not be looked at in order to see the general trend of a section.[2]

Punctuations.

It reading the Act of the legislature the court takes no notice of the comma.[3]

It is an error to rely on punctuations in construing Acts of the legislature.[4]

Preamble.

A preamble for an enactment of the legislature was formerly regarded as "a key to open the minds of the makers of the Act, and the mischief which they intended to redress".

The practice of inserting elaborate preamble in Act of the legislature has disappeared and it is now regarded as well settled law that the preamble cannot either restrict or extend the enacting part when the language and scope of an act are not open to doubt.[5]

In Powell V Hempton Pork Race Course Co. Lord Halsbury observed "Two propositions are quite clear–one that a preamble may afford useful light as to what a statute intend to reach, and another that, if an enactment is itself clear and unambiguous no preamble can qualify or cut down the enactment."[6]

1. Balraj V Jagatpal (1904) 26 All. 393, 406. P. C.
The Bharat Spinning and Weaving Co. Ltd Vs. Girni Kamgar Sangh Hubli. Appeal No. 1/1945 Bom. Lab Gaz (March 1945) Vol. 24 page 417.

2. Secretary of State Vs. Bombay Municipality. (1938) 237 Bom. L. R. 499. 508.
Dharwark union Bank Ltd. V Krishnorad (1937) 39 Bom. L. R. 203. 209. 210.

3. Pug Vs. Ashutosh Sen (1929) 31 Bom. L. R 702 (P. C.)

4. Maharani of Burdwan V Krishna Kamini 14 Cal. 365, (372) (P. C.)

5. Corporation of Calcutta V Arunchandra (1934) 61 Cal. 1047.

6. 1899. A. C. 143–147.

CHAPTER I

PRELIMINARY.

Short title.

1. This Act may be called the Bombay Industrial Relations Act, 1946.

Extent, commencement and application.

2. (i) This Act extends to the whole of the Province of Bombay.

(ii) It shall come into force on such date as the Provincial Government may by notification in the Official Gazette specify.

(iii) In the areas in which the Bombay Industrial Disputes Act, 1938, was in force immediately before commencement of this Act, this Act shall apply to the industries to which the said Act applied.

Bom. XXV of 1938

(iv) The Provincial Government may by notification in the Official Gazette apply all or any of the provisions of this Act to all or any other industries, whether generally or in any local area, as may be specified in such notification.

Application of the Act:—

By sub-section (3) of Section (2) in the areas in which the Bombay Industrial Disputes Act 1938 was in force, this Act applies to the industries to which that Act applied. By the undernoted notification[1] the said Act was applied to the whole of the Province of Bombay,[2] and by the Notifications undernoted the said Act was made applicable to the Cotton Textile Industry in the whole of the Province of Bombay,[2] the silk industry in the city of Bombay[3] and the woollen industry in the City of Bombay and the Thana Municipal Borough.[4] Recently the Act was made applicable to the banking industry,[5] as well as to Public passenger Transport Services & Electric Supply Concerns, in the city of Bombay. According to the original notification, the hosiery industry was included in the Cotton Textile Industry and was deemed to be a part of Cotton Textile Industry. But on the special representation by the industry that the conditions in that industry were different, by the undernoted Notification, the

1. Notification No. 2847/34/1 dated 14th March 1939 as amended on 3rd April 1939 see appendix. 5.

2. Notification No. 2847/34/A dated 30th May 1939 as amended on 10th June 1939, 21st July 1939 and as amended by No. 3269/34 (b) dated 11th January 1940. see appendix.

3. Notification No. 3269/34 dated 30th September 1939.

4. Notification No. 3269/34 (a) see appendix. 5.

5. Notification No. 396/46-I dated 26th Sept. 1946 and Notification No. 396/46-I dated 26th Feb. 1947 see appendix 5.

Government of Bombay declared hosiery industry to be a seperate industry and made the Bombay Industrial Disputes Act applicable to the hosiery industry in the City of Bombay, the Ahmedabad City Municipal Borough with the Cantonment and village of Sabarmati, the Poona Cantonment and Thana Municipal Borough and the notified area of Borivali.[1]

This Act applies to the above industries. Under Sub-Section 4, the Government is empowered to apply by notification this Act to any industry in any local area.

By section 122 of the present Act every appointment, order, rule, notification or notice made, issued or given under the provisions of the Bombay Industrial Dispute Acts is deemed to be made, or issued under the provisions of this Act unless superseded by an appointment order etc. under this Act.

Similarly standing orders settled, agreements registered, changes which have come into operation, settlements recorded, submissions registered, awards made, orders passed by the Industrial Court under the provisions of the Bombay Industrial Disputes Act shall be deemed to have been made under the corresponding provisions of this Act.

This act does not apply to an industry conducted by the Central Government.

The definition of the word employer in sec. 3 (11) of this Act by necessary implication excludes any industry run by the Central Government because clause (C) of that sub-section includes only any industry carried on by the department of the Provincial Government. If the Crown is to be bound down by an Act there must be a specific provision in the Act similar to one in the Factories Act or an inference to that effect must arise by necessary implication. Therefore the legislature had no intention of including any industry conducted or carried on by the Central Government within the scope of Bombay Industrial Disputes Act.[2]

Act not confined to disputes originating out of civil or contractual rights.

It is not necessary that the rights which could be brought before an Industrial Court shall be based on contract or civil law. Where it was contended that the Industrial Court should not countenance a demand for dearness allowance as it had no basis either in contract or any other civil rights, it was held that "this contention would frustrate the very object for which the Bombay Industrial Disputes Act 1938 has been enacted. If the rights which parties could bring before the Industrial Court were rights based on a contract or any other law for the time being in force then the parties could have been left to their remedies in the ordinary civil Courts and there was no necessity for devising the elaborate machinery of the Bombay Industrial Disputes Act. The Act contemplates a distinction between disputes with respect to an industrial matter and a civil right as such. The industrial dispute is a wider term than the dispute arising out of a contract or a civil right and it is in order to give opportunities to the parties to settle their disputes amicably

1. Notification No. 2847/3411 dated 17th July 1945. see appendix 5.

2. Shivshanker Nandlal Vs. Hatteshing Mills. Application No. 65/1943 Labour Gazette. Vol. 23 P. 55.

before resorting to a strike or lock out that the elaborate machinery had been devised under the Bombay Industrial Disputes Act. So long as the dispute relates to an industrial matter, the parties are entitled to resort to the machinery provided by the Act.[1] It is because there may be demands arising out of the relationship of the employers and the workers which either party can make on the other and which can not be enforced in a Court of law but the settlement of which is desirable for the smooth working of the industry that the Bombay Industrial Disputes Act is enacted for the purpose of settling such disputes in the Industrial Court.[2]

3. *In this Act unless there is anything repugnant in the subject or context:—*

Definition

(1) "approved list" means the list of approved unions maintained by the Registrar under section 12;

(2) "approved union" means a union on the approved list.

"The provision is made for the maintenance of a list of approved unions and all registered unions that satisfy among other certain conditions (laid down in S. 23) regarding the regulating of meetings of the executive committee, Government audit of their accounts and avoidance of resort to strikes so long as means of settlement and conciliation are available under the Act will be placed on the list. Approved unions will derive substantial advantage under the Act including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expense in important proceedings before the Labour Court and the Industrial Court". (Statement of objects and reasons.)

(3) "arbitration proceeding" means:—

(i) any proceeding under this Act before an arbitrator,

(ii) any proceeding before a Labour Court or the Industrial Court in arbitration;

(4) "arbitrator" means an arbitrator to whom a dispute is referred for arbitration under the provisions of this Act and includes an umpire;

(5) "association of employers" means any combination of employers recognised by the Provincial Government under Section 27;

(6) "award" means any interim or final determination in an arbitration proceeding of any industrial dispute or of any question relating thereto;

---

1. The Textile Labour Association Ahmedabad Vs. Ahmedabad Mill Owners Association. Submission No. 1/1945 Labour Gazette (Oct 1945) Vol 25, page 107.

2. The Textile Labour Association Vs. The Ahmedabad Mill Owners Association. Ref:-No. 1/1945 Bombay Labour Gazette (Oct. 1945) Vol 25 page 122

(7) "Board" means a Board of Conciliation appointed under section 7;

(8) "change" means an alteration in an industrial matter;

COMMENT.

The definition is the same as in the Bombay Industrial Disputes Act and this word is one of the most important words in the Act. The scheme of the Act is that whenever any change is desired in specified industrial matters either by the employers or employees, they should not attempt to force that change on the other party by a strike or a lock-out without following the procedure laid down in the Act for peaceful settlement thereof. The Act has made illegal, the changes in industrial matters in contravention of the provisions of the Act and has provided punishment for it. Also Labour Courts have been established who can order changes in certain specified industrial matters on an application of an employee.

For full consideration of the subject see commentary under section 46.

(9) "Commissioner of Labour" means an officer appointed by the Provincial Government for the time being to be the Commissioner of Labour; and in respect of any of the powers and duties of the Commissioner of Labour that may be confirmed and imposed on any person, includes such person;

(10) "conciliation proceeding" means any proceeding held by a Conciliator or a Board under this Act;

(11) "Conciliator" means any conciliator appointed under this Act and includes the Chief Conciliator or a Special Conciliator;

(12) "Court of Enquiry" means a Court constituted under section 100.

(13) "employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry, and includes:—

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of section (14);

(b) a person who has been dismissed or discharged from employment on account of any dispute relating to a change in respect of which a notice is given or on application made under section 42 whether before or after his dismissal or discharge;

Contractors' employees.

The definition has been amended, clause (a) is new. Under this clause, the persons engaged by a contractor in execution of the contract with an employer are specifically included under the category of an employee. Under the Bombay Industrial Disputes Act, the definition of the term "employer" included within its scope the owner of an undertaking who has employed a contractor to execute the whole or part of the ordinary work of the undertaking but there was corresponding provision making a person employed by a contractor to be an employee. But in spite of that it was held by the Industrial Court that the persons engaged by a contractor were the employees within the meaning of the Act.[1]

The insertion of clause (a) makes the position absolutely clear. Though according to the definition the employees of a contractor are included within the meaning of the term employees in the "industry," in practice the rights and privileges of a contractor's employees are less than the employees of the mills. The position of the employees of the contractor has been explained by the Industrial Court thus:- "In the first instance these persons are not employed by the mills themselves, but are employed by the contractors to whom a contract is given for doing a particular work. After the contract is given it is no concern of the mills as to how many people are employed and how much is paid to them by the contractor. It is true that under section 3 (11) of the Bombay Industrial Disputes Act an employer includes "Where the owner of any industry in the course of or for the purpose of conducting such industry contracts with any other person for the execution by or under the contract of the whole or any part of work which is ordinarilly part of the said industry, the owner of such industry." By reason of this definition the mills technically come within the category of employer in respect of persons engaged on contract labour and for this reason standing orders had to be framed in which the term "Operative" means all work people male or female employed in the mill or in mill permises either directly or through contractors, for the purpose of maintaining discipline and having uniformity in the industry it may be necessary to frame standing orders with regard to persons employed by the contractors, but that does not make the mills responsible for the ordinary remuneration paid to these people. If the mills are not responsible for their normal wages, we do not see how the responsibility for paying dearness allowance vests on them,

"It may also be noted that the standardization scheme in force in Ahmedabad does not apply to the wages of workers employed by the contractors. "[2]

It has been held that though the contractors' employees would be operatives, as defined in clause (a) of standing order No. 2 for operatives, they cannot be regarded as permanent operatives and could be discharged

1. The Textile Labour Association Ahmedabad Vs. The Manecklal Harilal Mills Co. Ltd. Appl. No. 37/1942. Bom. Labour Gazette. Vol. 23 Page 52. F. B.

2. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners Association. Appl. No. 19/1940 Bombay Labour Gazette.-(Oct. 1940) Vol. 20 page 148.

without notice.[1]

In view of this difference in rights and privileges between the two types of employees it becomes an important question whether the particular employees are the employees of the mills or the employees of the contractor. To determine whether the operatives were employees of the mill company and the mill company was their employer, the important critarion is who was responsible for payment of remuneration to the operative.

Where therefore the operatives were paid by the mill company through a contractor, they became the employees of the mill company and the contractor was merely a supplier of labour.[2] But where the contractor appointed his own employees and laid down conditions of work and could also dismiss them and was not merely mechanical medium to transmit the wages from the mills to the company held that the employees were contractor's employees and not of the mills.[3] But where the employees were appointed by the mills and were discharged by the mills, held that they were the employees of the mills. For once the working of a department is put in the charge of contract labour, it is the contractor who decides whom he should employ and whom he should discharge.[4] Clause (b) of the definition includes within the term "employees" the persons who have been dismissed or discharged from employment on account of any dispute regarding the change. The word "dismissed" has been added in this definition. It was not included in the definition under the Bombay Industrial Disputes Act. Similarly the words "whether before or after his dismissal or discharge" have been added.

Discharged or dismissed employee.

After a valid discharge from the mill an employee cannot be an employee of the mill unless he has been discharged on account of any dispute relating to a change of which notice is given under section 28 (the present section 42.) Thus where an employee was validly discharged, he has no *locus standi* to make an application on the ground of reduction in the number of employees specified in item 1 of Schedule II.[5]

Similarly where a person who was discharged by a valid notice made an application that the mill had committed an illegal change by wrongly designating as temporary certain employees who were doing work of a permanent character, held that the appicant was not an employee and therefore had no *locus standi* to make an application under section 55 of the Bombay Industrial Disputes Act.[6]

1. The Textile Labour Association Ahmedabad Vs. The Muneklal Harilal Mills. Co. Ltd. Appl. No. 37/1942 Bombay Labour Gazette. (Sept. 1943.) Vol. 23 Page 52. The Textile Labour Association Ahmedabad Vs. The A' bad Cotton Manufacturing Co. Ltd. Appl. 7 1942 Bombay Labour Gazette. (Sept. 1943) Vol. 23 Page 48.

2. Prabhudas Girdhar Vs. The Rohit Mills Ltd. Appl. No. 230/1943 Bombay Labour Gazette. (March 1945) Vol. 24. P. 412.

3. Vithaldas Girdhar Vs. The Harivallabhdas Mulchand Mills Co. Ltd. Appl. No. 110/44 Bombay Labour Gazette. (June 1945) Vol. 24 Page 616.

4. Gordhan Kastur Vs. The Aryodaya Ginning and Manufacturing Co. Ltd. Appl. No. 35/1944 Bombay Labour Gazette. (July 1946) Vol. 25 Page 837.

5. Ganpat Rambhan Vs. The New Prahlad Mills. Ltd. Appl No. 16/1941 Labour Gazette. Vol. 20. Page 935.

6. Govind Gangaram Vs. The Khatau Makanji Spinning and Weaving Mills Co. Ltd. Appl. 23/1944. Labour Gazette Vol. 24 Page 491.

Where an employee after his valid discharge made an application to the Industrial Court for declaration of an illegal change on the ground that the mills company had not paid him the dearness allowance payable to him under the award of the Industrial Court, held that under section 55 an application for illegal change is to be made either by the *employee concerned, representative of employees or the Labour Officer.*

The applicant was discharged from services on 13th November 1945. Thus from that date he was no longer an employee of the mill and so he had no *locus standi* to make an application which was made on 29th November 1945.[1]

Discharged on account of any dispute etc.

The words "discharged on account of any dispute relating to a change in respect of which notice is given under section 28" clearly show that all persons discharged for other reasons are excluded from the meaning of the term "employee".[2]

Future Employees.

Where the mills contended that the persons who are employed after the making of an award, would not be entitled to the benefit of the award on the ground that they were not the employees at the time of the award, the Industrial Court held overruling the contention that the term "employee" as defined in Section 3 (10) of the Act (corresponding to section 3 (13) of the present Act) is not restricted to the persons employed in the industry at any particular time and includes any person who is engaged in the industry at any time and therefore the persons employed after the award would be employees within the meaning of the term and therefore be entitled to the benefit of the award.[3]

Officers

Though all persons from the Manager right up to the lowest paid member of the staff are 'employees' of a bank, yet for the purpose of Bombay Industrial Disputes Act, "employees" of the bank mean only those employees who are clerks i. e. persons doing clerical work or peons, jamadars etc., who are doing manual work. All other employees of the bank such as Superintendents and junior or senior officers are excluded. Therefore no reference can be made under the Act for deciding disputes between the banks and such officers.[4]

1. Dahyabhai Kalidas Vs. The Vijaya Mills Company Ltd. appl. No. 114 of 1945 Bombay Labour Gazette. (July 1946) Vol. 25 page 848.

Nutwarlal Sankalchand Vs. The Vijaya Mills Co. Ltd. Appl. No. 113/1945 Bombay Labour Gazette (July 1945) Vol. 25 Page 859.

Yeshvant Ramji Vs. The Silver Cotton Mills. Ltd. Appl. No. 76/46 Bom. Govt. Gazette. Part.I (19 Dec. 1946.) P. 3713

2. Sahdeo Ganpat Savani Vs. The New Prahad Mills Ltd. Appl. 87/1946 Bombay Labour Gazette (June 1946) Vol. 25 page. 760.

3. Government Labour Officer Ahmedabad Vs. The Anant Mills Ltd. Appl. No. 42 of 1941. The Textile Labour Association Vs. Harivallabhdas Mulchand Mills Co. Ltd. Appl. No. 33 of 1941 Labour Gazette (Oct. 1941) Vol 21 page 153 (F. B.)

4. Certain Banking Companies Vs. Their employees Ref. No. 6/1946 and 10/1947. Bombay Government Gazette Part I. (9th April 1947) Page 1099.

Clerks.

The word " clerk " is not defined under the Act. We have therefore to go by its ordinary meaning. A clerk is generally a person who does routine work of writing, copying or making calculations under the direction or supervision of an officer. A person whose work is of a purely supervising or technical character is not a clerk.

The use of the word "employee" or similar words in awards.

An award was given by the Industrial Court fixing the quantum of dearness allowance to be paid to the workers employed in the textile industry in Ahmedabad on a submission filed by the Textile Labour Association and the Ahmedabad Mill Owners' Association. The award granted dearness allowance to the workers employed in the textile industry in Ahmedabad. Then the dispute arose as to the meaning of the words " workers employed in the textile industry ". The Textile Labour Association contended that the word " workers " used in the submission was synonymous with the word " employee " as defined in section 3 (10) of the Bombay Industrial Disputes Act. The Court held that they cannot decide the point by referring to the definition of the term " employee " as appearing in the Bombay Industrial Disputes Act for construing the term " worker " as appearing in the terms of the submission. The terms of the submission must be considered in the light of the circumstances giving rise to the dispute. The court held that the word " worker " as used in the submission meant " persons who are employed by the mills in connection with the textile industry, for the payment of remuneration to whom the mills hold themselves responsible, whose cost of living is affected by rise in cost of foodstuff and to whom the grant of dearness allowance would come as an appreciable relief." Having interpreted in this way the word " worker " as used in the submission, the court held that the dearness allowance would be payable to clerks, members of the staff, time keepers, supervisors, part-time workers, badlis, patawalas, watch and and ward men, jobbers and mukadams whose pay does not exceed Rs. 75/- per month. But the Court however held that, though mills by virtue of the definition given in section 3 (11) come technically within the definition of the word " employer " in respect of the persons engaged by contractors, the benefit of dearness allowance should not be extended to the people engaged by contractors in connection with the textile indusrty on the ground that such persons do not come within the perview of the interpretation put upon to the word " worker " by the Court. [1]

It must be noted that there is a distinction between the words "employee in the textile industry " and the words " persons employed in connection with the textile industry" used in the decision of the Industrial Court in connection with the meaning of the word " Worker ". The court held that the employees of the textile mills would obviously mean the persons actually employed in the textile mills while in the case of the latter expression, the connection is not

1. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association. Appl. No. 19/1940. Bombay Labour Gazette. (Oct. 1940) Vol. 20 Page 148.

necessarily so close.[1]

The said award of the Industrial Court and the above decision are of great practical importance in Ahmedabad where questions daily arise as to whether a particular person is entitled to the dearness allowance or not. These cases are decided in light of the above interpretation put upon by the Industrial Court.

It has been held that Dhobighat workers who were not engaged on contract basis are " workers " within the meaning of the award even though they were paid daily wages;[2] so also a gardener working in the mills[3] and a waterman in the mills[4] have been held to be a " worker " within the meaning of the award and therefore entitled to the dearness allowance. Where a canteen was run by the mill, the Court held that even though it was run on welfare basis and the mill may not stand to profit thereby, it does not cease to be a hotel run in connection with the textile industry and therefore the mills canteen staff are " workers " within the meaning of the award and are entitled to the dearness allowance under the award.[5]

Where the average pay of the applicants did not exceed Rs. 75/- per month in the majority of calendar months during the period of their serivce in the mills, held they would be entitled to dearness allowance under the award.[6]

(14) "employer" includes :-

(a) an association or a group of employers :

(b) any agent of an employer ;

(c) where an industry is conducted or carried on by a department of the Provincial Government, the authority prescribed in that behalf, and where no such authority has been prescribed, the head of the department ;

(d) where an industry is conducted or carried on by or on behalf of a local authority, the chief executive officer of the authority ;

(e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking con-

1. Babu Natha Vs. The Silver Cotton Mills Co. Ltd. Appl. No. 108 of 1943 Bombay Labour Gazette. (Oct. 1944) Vol. 24 Page 117.

2. The Textile Labour Assosciation Ahmedabad Vs. The New Swadishi Mills Co. Ltd. Appl. No. 30/1942 Bombay Labour Gazette (Sept. 1942) Vol. 22 Page 48.

3. Jiwan Kalidas Vs. The Vijaya Mills Co. Ltd. Appl. No. 100/ 1945 Bombay Labour Gazette (July 1946) Vol. 25 Page 846.

4. Krishnaram Vasanthbai Vs. The Vijaya Mills Co. Ltd. Appl. No. 101/1945. Bom. Labour Gazette, (July 1945) Vol. 25 Page 847.

5. The Government Labour Officer Vs. The Silver Cotton Mills Co. Ltd. Appl. No. 24/ 1942 Bombay Labour Gazette (August 1942.) Vol. 21 Page 1187.

6. Yashvant Ramji Vs. The Silver Cotton Mills Co. Ltd. Appl. No. 76 of 1945 Bombay Government Gazette Part I (19 Dec. 1946) Page 3713.

tracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking.

Legislatvie Changes :

This sub-section corresponds to sub-section 3 (11) of the Bombay Industrial Disputes Act, the only change is that under sub-clause (e) for the word " industry " the word " undertaking " has been substituted.

Industry carried on by the Central Government.

Where the Central Government carries on any industry, they do not become employers within the meaning of this sub-section because of the absence of any provision including the Central Government within the definition of the word " employer " and the express provision as regards an industry conducted by the Provincial Government in sub-clause (e) of sub-section 3 (11) of the Bombay Industrial Disputes Act (Corresponding to this sub-section). If the Crown is to be bound down by an Act there must be a specific provision to that effect similar to the one in section 80 of the Factories Act or an inference to that effect must arise by necessary implication.[1]

Contractors' employees.

By reason of the clause (e) of this definition the mills technically come within the catagory of employers in respect of persons engaged by contractors.[2]

(15) "illegal change" means an illegal change within the meaning of sub-section (4) or (5) of section 46 ;

For comments see comments under section 46.

(16) "Industrial Court" means the Court of Industrial Arbitration constituted under section 10 ;

(17) "industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter ;

COMMENT.

This sub-section is the same as section 3 (13) of the Bombay Industrial Disputes Act.

Industrial Dispute is dispute connected with an industrial matter

1. Shivshanker Nandlal and others Vs. The Hattenley Mills Ghatkopar Appl. No. 65/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23 Page 55.

2. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners Association and others. Appl. No. 19/1940 Bombay Labour Gazette. (Oct. 1940.) Vol. 20 Page 140.

The Textile Labour Association Ahmedabad Vs. The Maneklal Harilal Mills Co. Ltd. Appl. 37/1942 Bombay Labour Gazette (Sept. 1943) Vol. 23 Page 52 (F. P.)

between an employer and employees or employees and employees. So a dispute is an industrial dispute only if it is connected with an industrial matter. For the meaning of the word industrial matter and cases thereon see section 3 (18).

Distinction Between Industrial Dispute and Dispute Regarding Civil Rights.

The Act contemplates a dispute with respect to an industrial matter and a Civil right as such. " The industrial dispute " is a far wider term than the dispute arising out of a contract and civil right. So long as the dispute relates to an industrial matter the parties are entitled to resort to the machinery provided by the Act. The whole of the Bombay Industrial Disputes Act would become infructuous for all practical purposes if the operation of the Act is confined to disputes which have their origin in civil or contractual rights. If the rights which the parties could bring before the Industrial Court were the rights founded upon contract or any other law for the time being in force, then the parties could have been left to their remedies in the ordinary civil courts and there was no necessity for devising elaborate machinery of the Bombay Industrial Disputes Act.[1]

Where a union acting on behalf of some of the workers demanded standardization of wages and dearness allowance and gave a notice of strike to the Bombay Mill Owners ' Association if the employers did not entertain the proposals, held that the demands related to Industrial matters and an industrial dispute had arisen.[2]

(18) "industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers and employees, or the mode, terms and conditions of employment, and includes :–

(a) all matters pertaining to the relationship between employers and employees or to the dismissal or non–employment of any person ;

(b) all matters pertaining to the demarcation of functions of any employees or classes of employees ;

(c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act ;

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole ;

1. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners Association, Submission No. 1/1945 Bombay Labour Gazette (Oct .1945) Vol. 25 Page 107.

2. The Mill Owners' Association Bombay Vs. The employees in the Cotton Textile Mills Reference No. 1/1946 Bombay Labour Gazette (August 1946) Vol. 25 Page 926.

COMMENT.

Legislative Changes.

This sub-section reproduces the definition of " an industrial matter " as given in section 3 (14) of the Bombay Industrial Disputes Act 1938 with slight changes. The words " relating to employment " are new.

The words " pay " and " reward " which appeared in the former Act have been deleted for the simple reason that they come within the new definition of " wages " in S. 3 (39) of this Act. So these words are not necessary here.

Wages.

(1) Demand for higher wages is an industrial matter.[1]

(2) Demand for dearness allowance is an industrial matter within the meaning of this clause. For, the " wages " would include the dearness allowance.[2]

(3) A demand for bonus is an indutsrial matter.[3]

(4) Demand of the employees for the payment of war bonus relates to an industrial matter.[4]

(5) The demand of the weavers of a mill that they should be paid on scale weight instead of on nominal or standard weight is an industrial matter.[5]

Where the workers demand the payment of unclaimed wages on a day other than the day fixed for payment of such wages, held that it amounts to asking for a change in the industrial matter because it relates to payment of wages.[6]

Appointment, dismissal, discharge etc. of officers and operatives:—

Grievance against the management with regard to the appointment of a

1. Swadeshi Mills Co. Ltd. Kurla Vs. Government Labour Officer, Bombay. Appn. No. 57/1941 Bombay Labour Gazette (Dec. 1941) Vol. 21. Page 382.

2. The Textile Labour Association Vs. Shrinagar Weaving and Manufacturing Co. Ltd. Appn. No. 10/1941 & 32/41 Bombay Labour Gazette (Sept. 1941) Vol. 21 Page 35. The Government Labour Officer Vs. The Anant Mills Co. Ltd. Appn. No. 33/1941 and 42/1941 Bombay Labour Gazette, (Oct 1941) Vol. 21. Page 135.

The Textile Labour Association Vs. The Ahmedabad Mill Owners' Association submission No 1/1945 Bombay Labour Gazette (Oct. 1945) Vol. 25 Page 107.

Mill Owners' Association Bombay Vs. Baboo Shamji Appn. No. 2/1940 Bombay Labour Gazette (March 1940) Vol. 19. Page 592.

Hattersley Mill Ghatkoper Vs. Government Labour Officer, Bombay Appn. No. 53/1941 Bombay Labour Gazette (Dec. 1941) Page 380.

3. The Textile Labour Association Ahmedabad. Vs. The Ahmedabad Mill Owners' Association. Reference No. 1/1945 Labour Gazette. (Oct. 1945) Vol 25 Page 122.

4. Swadeshi Mills Co. Ltd. Kurla Vs. The Govt. Labour Officer, Bombay and others, Appn. No. 6/1943 Bombay Labour Gazette (April 1943) Vol. 22. Page 527.

5. The Laxmi Cotton Manufacturing Co. Ltd. Vs. Government Labour Officer and others. Appn. No. 10/1940 and 11/1940. Bombay Labour Gazette. (Sept. 1940) Vol. 20. Page 45.

6. The Mill Owners ' Association 'Bombay Vs. The Govt. Labour Officer, Bombay and others Appn. No. 3/1940 Bombay Labour Gazette. (April/1940) Vol. 19 Page. 693.

new Weaving Master is an industrial matter.[1]

Demand for reinstatement of an employee who is lawfully discharged under standing orders is an industrial matter within the meaning of the Act.[2]

Suspension of a jobber is an industrial matter.[3]

Question as to whether an operative was improperly discharged is an industrial matter.[4]

Dismissal of an employee is an industrial matter.[5]

Work.

The demand of *Badlis* that they should all be given work comes under the definition of industrial matter.[6]

Demand for a Holiday.

Demand for a holiday is a demand with reference to an industrial matter and it may be that an industrial dispute arises when the workers demand a holiday and the management refuses to grant the same.[7]

But where the workers remained absent because they wanted to take part in municipal elections, held " the real question is whether the cessation of work was in respect of an industrial matter and for that purpose we have to see whether the reason given for refusing to work on that day " because they wanted to take part in the municipal elections, " is an industrial matter." In my opinion this cannot be described as an industrial matter and the dispute between the employees and the mills for an exchange of holiday on this ground cannot be regarded as an industrial dispute.[8]

Hours of Work.

Question about hours of work is an industrial matter and when there is a dispute between employers and employees as regards the right to take extra

1. The New China Mills Ltd. Bombay. Vs. The Govt. Labour Officer, Bombay Appn. No. 14/1940 Bombay Labour Gazette (Sept. 1940) Vol. 20 Page 50.

2. Ahmedabad Cotton and Waste Manufacturing Co. Ltd. Vs. The Textile Labour Officer, Ahmedabad and others Appn. No. 44/1940 Bombay Labour Gazette. (Oct. 1940) Vol. 20. Page 146.

Standard Mills Co. Ltd. Vs. Government Labour Officer, and others Appn. No. 7/1943 Bombay Labour Gazette (April 1943) Page 528.

3. Reghuvansi Mills. Ltd. Bombay Vs. The Government Labour Officer and others. Appn. No. 9/1942 Bombay Labour Gazette (July 1942) Vol. 21. Page 1122.

4. The Khandesh Spinning and Weaving Mills. Co. Ltd. Vs. The Government Labour Officer and others Appn. No, 48/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21 Page 52.

5. The Khatau Makanji Spinning and Weaving Co. Ltd. Vs. S. R. Deshpande. Appeal No. 1/1943. Bom. Lab. Gazette. Vol. 23. Page 372. High Court Decision.

6. The Laxmi Cotton Manufacturing Co. Ltd. Sholapur. Vs. The Government Labour Officer and others Appns. Nos. 10/1940 and 11 /1940 Bombay Lobour Gazette. (Sept. 1940) Vol. 20. Page, 45.

7. The Manekchowk and Ahmedabad Manufacturing Co. Ltd. Vs. The Textile Labour Association Ahmedabad. Appn. No. 3/1941. Bombay Labour Gazette. (April 1941) Vol. 20. Page 626.

8. The Pratap Spinning Weaving and Manf. Co. Ltd. Vs. The Amalner Girni Kamgar Union and others Appn. No, 27/1942 Bombay Labour Gazette. (Dec. 1942) Vol. 22 Page 252.

hours of work it is an industrial dispute.[1]

Privileges.

The word " privilege " is used in addition to the ' rights " or "duties" of employers or employees and it should therefore mean something which cannot be demanded as of right and it is not therefore a duty on the part of the other party but a concession which is made without any legal obligation.[2]

The distribution of foodstuffs at cheaper rates from mill is a privilege enjoyed by the operatives of a particular mill which opens the grain shop. It is also a matter pertaining to the relationship between the employers and the employees within the meaning of the industrial matter. Because it is as the employees of the mills that they would be entitled to the ' privilege ' of getting cheap foodstuffs from the grain shop opened by their employer.[3]

Refusal to give names.

Where the management refused to give the names of persons who gave them information that the workers were intending to go on strike, held that the refusal to give names of such persons was 'an industrial matter'.[4]

Non-employment.

Demand of some of the workers that Muslim workers should not be employed by the mills is an 'industrial matter' as it relates to non-employment of employees.[5]

(19) "industry" means :—

(a) any business, trade, manufacture or undertaking or calling of employers ;

(b) any calling, service, employment, handicraft; or industrial occupation or avocation of employees;
and includes–

(i) agriculture and agricultural operations ;

(ii) any branch of an industry or group of industries which the Provincial Government may by notification in the *Official Gazette* declare to be an industry for the purposes of this Act ;

1. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Textile Labour Association Ahmedabad. Appn. No. 4/1941 Bombay Labour Gazette. (April 1941) Vol. 20 Page. 629.

The Century Spinning and Manufacturing Co. Ltd. Vs. The Government Labour Officer Bombay. Appn. No. 59/1941 Bombay Labour Gazette. (Jan. 1942) Vol. 21. Page 519.

Mahadeo Vishnu Vs. The Victoria Mills Ltd. No. 2 App. No. 23/1943 Bombay Labour Gazette. (Nov. 1943) Vol. 23. Page 197.

2. The Standard Mills Co. Ltd. Vs. The Government Labour Officer Bombay. Appn. No. 7/1943 Bombay Labour Gazette. (April 1943) Vol. 22. Page 528.

3. Ibid.

4. David Mills Co. Ltd. Vs. The Government Labour Officer and others. Application No. 42/1946 Bombay Government Gazette. (6th March 1947) Part I Page 812.

5. The Bombay Dyeing and Manufacturing Co. Ltd. Vs. The Government Labour Officer and others. Application No. 64/1946. Bombay Government Gazette Part I. (6th March 1247) Page 814.

Legislative Changes.

There have been important and far reaching changes in the definition of 'industry' in this Act. Under the Bom. Industrial Disputes Act the definition of industry in section 3 (15) of that Act used the word "includes" while the present definition uses the word "means". It means that the definition in this Act is exhaustive.

Moreover sub-clause (i) of clause (b) is entirely new and by it agriculture and agricultural operations are specifically included in the definition of "industry." So this Act can be made applicable to agriculture also. By clause (ii) the Provincial Government has been empowered to declare a branch of any industry to be an industry for the purposes of the Act, while under section 3 (16) (c) of the Bombay Industrial Disputes Act, the Registrar had powers to recognise a branch of an industry to be an industry for the purposes of this Act.

(20) "Joint Committee" means a Joint Committtee constituted under section 48.;

(21) "Labour Court" means a Labour Court constituted under section 9;

As to the powers and the procedure of the Labour Courts see Chapter XII. The prvoision for the establishments of the Labour Court is new.

(22) "Labour Officer" means an officer appointed to perform the duties of a Labour Officer under this Act; and includes in respect of such powers and duties of the Labour Officer as may be conferred and imposed on him, an Assistant Labour Officer;

For powers and duties of the Labour Officer see Chapter VI. The provision for Assistant Labour Officer is new.

(23) "local area" means any area notified as a local area for the purposes of this Act.

Under proviso (a) to section 122, notifications issued under the Bombay Industrial Disputes Act are to remain in force until superceded by a notification under this Act. The local areas notified by the Government notification No. 2847/34/B/ dated 19-5-1939 are given in Appendix V (6).

(24) "lock-out" means the closing of a place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension or refusal occurs in consequence of an industrial dispute and is intended for the purpose of–

(a) compelling any of the employees directly affected by such closing, suspension or refusal or any other employees of his, or

(b) aiding any other employer in compelling persons employed by him,

to accept any term or condition of or affecting employment.

Legislative Changes.

This section reproduces section 3 (19) of the Bombay Industrial Disputes Act with slight changes. An important change is that the words "any of the employees directly affected by such closing, suspension or refusal or any other employees of his" have been substituted for the words "those persons" occurring in the Bombay Industrial Disputes Act. Under the Bombay Industrial Disputes Act the closing of the place or refusal by the employer to continue to employ persons must be with the intention of compelling those *very persons* to accept any term or condition of employment and if it was with the purpose of compelling other employees to accept terms of employment it was held it did not amount to a lock-out under that Act.[1]

The law has now been changed and the definition of lock-out is made wider and if the purpose of the employer in refusing to continue to employ persons employed by him is to compel those employees or any other employees of his to accept any terms of employment, it would amount to a lock-out.

Definition Exhaustive.

The use of the words "means" shows that the definition is exhaustive.

Lockout; Illegal Lockout; Penalty.

Lock-out has been defined by this sub-section.

The circumstances in which it would be illegal have been laid down in section 98 and section 102 prescribes the penalty for declaring or commencing an illegal lock-out.

Purpose of Closing or Refusal must be to compel etc.

The mill company increased the daily hours of work which they were legally entitled to. Some workers resented this proposal to work for an extra hour and they came to work and left the work according to the old timings. The next day the mills refused admission to those workers and replaced these workers permanently by other employees. In an application to declare this action of the mill company to be an illegal lock-out, the industrial Court held[2] that unless the exclusion of the workers was intended for compelling *them* to accept any condition of the employment, the action of the mill authorities would not amount to be a lock-out. The mill authorities dismissed those workers in consequence of the strike and they were not prepared to take them even if they accepted new conditions of employment. The refusal

1. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Textile Labour Association Ahmedabad. Appl. No. 4/1941 and Appn. No 8/1941 Bombay Labour Gazette. (April 1941) Vol. 20 Page 629.

2. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs The Textile Labour Association Ahmedabad. Appn. No. 4/1941 and the Textile Labour Association Ahmedabad Vs The Ahmedabad Cotton Manufacturing Co. Ltd. Appn. No. 8/41. Bombay Labour Gazette (April 1941) Vol. 20 page 629.

to take them therefore was not for the purpose of compelling them to accept any term or condition of employment and was not therefore a lock-out under the Act.

In order that a refusal by the employer to continue to employ persons employed by him would amount to a lock-out, it is necessary that the purpose of such refusal must be to compel the employees to accept any term or condition affecting employment. Thus where the purpose of the employer in refusing to take back the employees was to punish them rather than to compel them to any term of employment, held that it was not a lock-out. There was a demand by the workers to remove a spinning master. Conciliation proceedings under the Act started and subsequently the workers resorted to strike as they were legally competent to do. After about five days the strike was called off and all workers went to work but some were refused work and were told that no work would be given to them for the part they had played in bringing about the strike. They were taken on work 27 days after they first went to resume work. The workers prayed that the refusal of the mills to allow them to work for these 27 days was an illegal lock-out as well as an illegal change held that it was not a lock-out, for the management wanted to punish these workers. Under the definition of lock-out it must be intended for the purpose of compelling a worker to accept any term affecting employment. But these workers when they called off the strike and offered themselves for work along with other workers, it must be taken, unless proved to the contrary, that they had given up their demand and there would be no question of compelling them to accept any conditions of employment. The refusal to employ the workers after the strike was called off does not come within the definition of a lock-out. The Court however held that refusal to take them back amounted to an illegal change.[1]

At the end of the above judgment it has been printed that " lock-out " is illegal, but it seems to be a mistake.

It should be " change " is illegal. For in the body of the judgment it has been very clearly held that it was not a lock-out.

(25) "member" means a person who is an ordinary member of a union and who has paid a subscription of not less then two annas per month :

Provided that no person shall at any time be deemed to be a member if his subscription is in arrears for a period of three months or more next preceding such time ;

Legislative Changes.

Under the definition given in section 3 (20) of the Bombay Industrial Disputes Act, the word " member " meant an ordinary member of a union who has been paying a subscription not less than one anna. Under this Act.

1 Pandurang Hari Vs. The New City of Bombay Manufacturing Co. Ltd. Appn. No. 110/1945. Bombay Labour Gazette. (April 1946) Vol. 25 Page 601.

the minimum subscription shall not be less than 2 annas and also the subscription should not be in arrears for a period of three months or more.

Payment of Subscription Necessary.

An employee whose name is entered in the register of members of a Union but who has not paid a single instalment of subscription cannot be said to be a member of a Union.[1]

But a member does not cease to be as such only because one or two instalments of subscription may have remained in arrears.[2]

(26) "occupation" means such section of an undertaking as is recognised under section 11 to be an occupation.

(27) "prescribed" means prescribed by rules made under this Act;

(28) "Primary Union" means a union for the time being registered as a Primary Union under this Act;

(29) "Qualified Union" means a union for the time being registered as a Qualified Union under this Act;

For the full meaning of the terms Primary Union and Qualified Union and Registered Union see sections 13, 14 and comments under those sections.

(30) "registerd union" means a union registered under this Act;

For further details see sections 13 and 14.

(31) "Registrar" means a person for the time being appointed to be the Registrar of Unions under this Act; and includes in respect of such powers and duties of the Registrar as may be conferred and imposed on him, an Assistant Registrar of Unions;

(32) "representative of employees" means representative of employees entitled to act as such under section 30,

(33) "Representative Union" means a union for the time being registered as a Representative Union under this Act;

For the full meaning of the term Representative Union see section 13 and 14.

(34) "schedule" means a schedule appended to this Act;

(35) "settlement" means settlement arrived at during the course of a conciliation proceeding;

1. The Textile Labour Association Ahmedabad. Vs. The Ambica Mills Co. Ltd. No. 2. Appn. No. 13/1940 Bombay Labour Gazette. (Sept. 1940) Vol. 20 Page 55.

2 The Textile Labour Association Ahmedabad. Vs. The Ambica Mills Co. L'd. No. 2 Appn. No. 8/1940. Bombay Labour Gazette. (Oct. 1940) Vol. 20 Page 139.

(36) "strike" means a total or partial cessation of work by the employees in an industry acting in combination or a concerted *refusal or a refusal under a common* understanding of employees to continue to work or to accept work, where such cessation or refusal *is in consequence of an industrial dispute;*

Legislative Changes.

The definition of strike is the same as given under section 3 (33) of the Bombay Industrial Disputes Act except the deletion of the words "in any industry" occurring at the end of the definition in that Act. But that does not make any material change.

Definition Exhaustive.

The use of words "means" shows that the definition is exhaustive.

Strike; Illegal Strike; Penalty.

Strike has been defined by this sub-section. The circumstances in which it would be illegal have been laid down in section 97 and section 103 prescribes the penalty for declaring or commencing an illegal strike.

Three Conditions of a strike.

In order that a cessation of work or refusal to work by the employees may amount to a strike, three conditions must be satisfied. (1) There must be a partial or total cessation of work or refusal to work or to accept work by the employees.

2 The cessation must be by employees acting in combination or the refusal must be concerted or under a common understanding of the employees.

3 The cessation or refusal must be in consequence of an industrial dispute.

If any of these three conditions is not satisfied, the cessation of or refusal to work is not a strike within the meaning of the term as used in this Act.

It must also be remembered that every strike is not illegal. Only if the strike is commenced or continued under any of the circumstances mentioned in section 97 subsection (1) or (2), the strike would be illegal. So in order to prove that the strike is illegal in addition to proving the necessary conditions for constituting the strike, one of the circumstances mentioned in sub-sections (1) and (2) of section 97 must also be proved.

For full and detailed consideration of the subject see the commentary under section 97.

(37) "undertaking" means such concern in any industry as is recognised by the Registrar under Section 11;

XVI of 1926. (38) "union" means a Trade Union of employees which is registered under the Indian Trade Unions Act, 1926;

(39) "wages" means remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment and includes—

(i) any bonus, allowances (including dearness allowance), reward or additional remuneration;

(ii) the value of any house accommodation, light, water, medical attendance or other amenity or service ;

(iii) any contribution by the employer to any pension or provident fund ;

(iv) any travelling allowance or the value of any travelling concession;

(v) any sum paid or payable to or on behalf of an employee to defray special expenses entailed on him by the nature of his employment ;

(vi) any gratuity payable on discharge.

Wages:–

This term was not defined under the Bombay Industrial Disputes Act and the Industrial Court held that the Legislature must have used the word 'wages' in the same sense as is used in the Payment of Wages Act of 1936, in which the word "wages" has been defined'.

But the word has now been defined and the definition is much wider and different in material particulars and is designed to serve a different purpose and it specifically includes items II to VI which have been specifically excluded in the definition of the term 'wages' under the Payment of Wages Act.

The definition of the term 'wages' under the Payment of Wages Act was designed to include in wages everything which the workman would receive if he fulfilled all the conditions. While this definition seems to be designed to include in the term ' wages ' everything which can be the subject matter of an Industrial dispute. So decisions interpreting the word " wages " under the Payment of Wages Act and decisions under the Bombay Industrial Disputes Act under which it was held that the word " wages " is used in the same sense as in the Payment of Wages Act would now not be a safe guide for the interpretation of the word ' wages ' under this Act.

Fixing of Basic Wages.

In an award in an arbitration regarding basic salary between certain Banks and its employees the Industrial Court held that " the basic pay must be more than the pre-war starting pay because it is a common knowledge

1. City Deputy Collector & Labour Officer, Ahmedabad Vs. National Mills Co Ltd Appn. No. 4/1939. Bombay Government Gazette. Part IV-C dated 8-2-1940 Page 160.

based on experience of the First World War that although the rise in the cost of living occasioned by the second war may go down in future, a part of the rise is bound to remain as a permanent feature in the economic life of the country. The exact extent of it cannot be predicted or measured now.....The amount of dearness allowance which can be given may not fully neutralise the cost of living and a fair living wage. Therefore there is a need to raise the basic wage to such an amount that along with the dearness allowance the total emoluments would be sufficient to afford a decent livelihood.[1]

Dearness Allowance.

In the definition of the term wages under this Act the dearness allowance has been included in the term 'wages.' Even under the Bombay Industrial Disputes Act where the term " wages " was not defined, it was held that dearness allowance was included in the term " wages ".[2]

Principles for Grant of Dearness Allowance.

The Industrial Court has held, " We are not prepared, as at present advised, to accept the principle that the employers owe any duty to the employees to make good to them to the full extent the rise in the cost of living by reason of the fact that there has been such a rise. The workers would not be entitled to a rise to the full extent of the rise in the cost of living unless it could be shown that the industry has benefitted to a corresponding extent by the very contingency which has occasioned the rise.".[3]

This is an authoritative pronouncement on the principles in determining the quantum of dearness allowance due to a rise of cost in living and has been taken as the basis in numerous awards and adjudications for the grant of dearness allowance to workers.

Bonus:-

Bonus is included in the definition of the term "wages" under this Act.

Bonus is a grauitous payment as it cannot be claimed as of right i. e. a legal right enforceable in a court of law. It is an exgratia payment which an employer may make in his descretion to a worker in addition to his wages

1 In the matter of Arbitration between certain Banking Companies and its employees. Reference No. 6/1946 and 7/1947. Bombay Government Gazette. Part. I (9th April 1947) Page 1099.

2. Government Labour Officer, Ahemdabad Vs. The Anant Mills Co. Ltd. Appn. No. 33/1941 Labour Gazette. (Oct. 1941) Vol. 21. Page 153.

Th Textile Labour Association Vs. Shrinagar Weaving and Manufacturing Co. Ltd. Appn. No. 10/1941 Labour Gazette (Sept. 1941) Vol. 21 Page 35.

The Textile Labour Association Ahmedabad Vs. The A'bad Mill Owners' Association. Submission No. 1/1945. Labour Gazette. (Oct. 1945) Vol. 25. Page 107.

3. The Textile Labour Association Vs. The Ahmedabad Mill Owners' Association. Submission No. 1/1940 (May 1940) Bombay Labour Gazette. Vol. 19. Page 773.

The Textile Labour Association Vs. The Ahmedabad Mill Owners' Association. Submission No. 1/1945. (Oct. 1945) Bombay Labour Gazette. Vol. 25 Page 107.

In the matter of arbitration between the Textile Labour Assocaition Vs. The Ahmedabad Mill Owners' Association. Ref. 2/1946. Bombay Government Gazette. Part I. (Feb. 1946)

and which the latter cannot legally demand. But that fact does not affect the right of the worker under the Act to demand the payment of bonus as a reward or additional payment for work already done and therefore demand for bonus is an industrial matter[1].

Principles for Grant of Bonus.

Bonus by its very nature is an exgratia payment and must depend upon the total income of a company in the particular year. The facts that the employees were paid bonus at a higher rate in the previous year or that their pay or dearness allowance is on a smaller scale than in other centres are irrelevant considerations".[2]

A Civil Suit to Enforce Payment of a Bonus.

The Government of Bombay by order made under rule 81. A. sub-rule (1) of the Defence of India Rules appointed an adjudicator to decide whether the Company should grant bonus and if so on what terms and conditions. The adjudicator gave an award that the bonus be paid by the Company to its workmen at a certain rate. The Government of Bombay thereupon made an order purporting to be under clauses (d) and (e) of sub-rule (1) of rule 81. A. of the Defence of India Rules directing that the award shall be in force and shall bind the Company and its employees. But the Company did not pay the Bonus to its clerical staff. One of them filed a civil suit for recovery of the bonus in the Small Causes Court. The suit was decreed. The High Court of Bombay in revision confirmed the decree holding that though bonus not promised by an employer of his own volition can hardly be said to be a contract debt, but when that bonus is declared under provision of such as are contained in rule 81. A. of the Defence of India Rules, the payment of that bonus becomes an obligation and a debt so declared must be taken to be a binding debt and a civil suit to recover the same can lie.[3]

Reward :-

A reward is anything given or paid in return for anything done as kindness, services etc. It includes additional gratuitous payment for work already done, over and above a payment according to agreement. If the workers say that in a certain year the employers have made handsome profits and that the employers can, therefore afford to pay them some thing more than the stipulated wages, they are asking for the additional payment as a reward for work already done by them which has resulted in such high profits. Such additional payment is not a pure gift because a gift may have no relation to any work done or to be done by the donee, but it is a reward in as much as it is asked

1. The Textile Labour Association Vs. The Ahmedabad Mill Owners' Association Reference No. 1/1945. Labour Gazette (Oct. 1945) Vol. 25 Page 122.

2. In the matter of arbitration between The Khandesh Spinning and Weaving Mills Co. Ltd. and its employees Reference No. 2/1946 Bombay Govt. Gazette. Part. I (13 Feb. 1947) Page 614.

In the matter of Arbitrantion between Gendalal Mills Ltd. and its employees Ref. No. 3/1946 Bombay Govt. Gazette Part. I (13 Feb. 1947) Page 616.

3. Standard Vacuum Oil Co. Vs. Avelino D' Souza, Civil Revision Appn. No. 234/1945. Bombay Labour Gazette, Vol. 25 Page 332, (Bombay High Court Decision.)

for as an extra payment for work actually done. It is true that it cannot be enforced in a Court of Law because it is not a legal right. But it does not follow that it cannot become a subject matter of an industrial dispute between the employers and workers if the latter demand such payment as a reward in the form of a bonus.'

Sukhadi :-

As far as *Sukhadi* and extra bonus (different from the bonus due under an agreement) are concerned, a member of the staff who has not the good will of the management cannot get these amounts. For it is not a matter of right. It depends entirely on the discretion and the good will of the management.[2]

Exgratia Allowance.

The words "wages" imports the idea of legal liability on the part of the employer to pay a definite and well settled consideration arising from a legal relationship but an exgratia payment having no relationship whatsoever either with the amount of work done or efficiency or good attendanace and which may be withheld at the option of the employer cannot be regarded 'wages'. The mills paid some workers some allowance of the aforesaid kind over and above the scheduled rates duly notified under the Standing order. The payment of this additional allowance cannot be regarded as 'wages' within the meaning of the word under the Payment of Wages Act.[3]

The term "wages" was not defined under the Bombay Iudustrial Disputes Act and the Industrial Court had held that the definition of the term "wages" under the Payment of Wages Act applies to cases under the B. I. D. Act. Now the term has been defined in this Act and the definition is wider and substantially different. The decisions therefore under the Bombay Industrial Disputes Act discussing or deciding as to whether a particular item falls under 'wages' or not cannot now be a safe guide under this Act.

---

1. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association, Ahmedabad. Ref: No. 1/1945 Bombay Labour Gazette. (Oct. 1945) Vol. 25. Page 122.

2. Dharamsi Hathising Vs. The Ahmedabad Laxmi Cotton Mills Co. Ltd. Appn. No. 162/1943. Bombay Labour Gazette. (Oct. 1944) Vol. 24. Page 123.

3. Sakharam Jayaram Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Appn. No. 158/1943 (January 1944) Bombay Labour Gazette. Page 322.

CHAPTER II.

Authorities to be Constituted or Appointed under this Act.

Commissioner of Labour

4. (1) The Provincial Government shall, by notification in the *Official Gazette*, appoint a person to be the commissioner of Labour.

(2) The Provincial Government may by general or special order notified in the *Official Gazette* confer and impose all or any of the powers and duties of the Commissioner of Labour on any person whether generally or for any local area.

COMMENTS.

Under the B. I. D. Act the Commissioner of Labour was ex officio the chief conciliator. Under this Act these two offices may be separate.

Registrar and Assistant Registrars

5. (1) The Provincial Government shall, by notification in the *Official Gazette*, appoint a person to be the Registrar of Unions for the whole of the Province.

(2) The Provincial Government may, by similar notification, appoint a person to be the Assistant Registrar of Unions for any local area and may by general or special order, confer on such person all or any of the powers of the Registrar of Unions under this Act.

COMMENTS.

This Section corresponds to S. 4 of the Bombay Industrial Disputes Act.

Conciliators

6. (1) The Provincial Government shall appoint a person to be the Chief Conciliator. His jurisdiction shall extend throughout the Province.

(2) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Conciliator for any industry in a local area specified in the notification.

(3) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Special Conciliator for such local area or for such industry for such local area or for such industrial dispute or class of disputes as may be specified in the notification.

COMMENTS.

This section corresponds to S. 21 of the Bombay Industrial Disputes Act, but under that Act the Commissioner of Labour was ex officio the chief

Conciliator while under this Act the two offices may be separate.

Board of conciliation.

7. (1) When an industrial dispute arises the Provincial Government may, by notification in the *Official Gazette*, constitute a Board of Conciliation for promoting the settlement of such dispute.

(2) The Board shall consist of a Chairman who shall be an independent person and an even number of members. Every member shall be either an independent person or a person chosen by the Provincial Government from a panel representing the interests of the employers or employees, provided that the number of persons chosen from panels representing employers and the number chosen from panels representing employees shall be equal. Such panels shall be constituted in the manner prescribed.

(3) If any vacancy occurs in the office of the Chairman or a member of the Board before the Board has completed its work, such vacancy shall be filled in the manner prescribed and the proceedings shall be continued before the Board as so reconstituted from the stage at which they were when the vacancy occurred.

Explanation: – For the purposes of this section a person shall be deemed to be an independent person if he is unconnected with the dispute for the settlement of which the Board is constituted and the industry directly affected by the dispute.

Legislative Change:–

This Section corresponds to S. 23 of the Bombay Indstrial Disputes Act with some changes.

For the manner in which the panels representing the interests of the employers and employees shall be constituted and the manner in which the vacancies in the Board of Conciliation shall be filled up, see Rules.

Labour Officer and Assistant Labour Officers.

8. (1) The Provincial Government may by notification in the *Official Gazette*, appoint Labour Officers for any local area or areas.

(2) The Provincial Government may, by similar notification, appoint Assistant Labour Officers for any local area or areas, and may by general or special order confer on them all or any of the powers of the Labour Officer under this Act.

This Section corresponds to Section 22 of the Bombay Industrial Disputes Act.

For Powers and duties of Labour Officer see Chapter VI.

9. The Provincial Government shall, by notification in the

Labour Courts. *Official Gazette*, constitute one or more Labour Courts having jurisdiction in such local areas as may be specified in such notification and shall appoint persons having the prescribed qualifications to preside over such Courts :

26 Geo. 5. ch. 2. Provided that no person shall be so appointed unless he possesses the qualifications, other than the qualification of age, laid down under Section 255 of the Government of India Act, 1935, for being eligible to enter the subordinate civil judicial service in the Province of Bombay.

COMMENTS.

The provisions for constitution of the Labour Courts are new. "The provisions relating to Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and lock-outs occurring over a series of years has revealed the fact that a large proportion of stoppages arise out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one sided exercise of discretion in dealing with them creates a large volume of bitterness and discontent which lead to frequent disturbances of the peace of the industry and causes serious loss of production and workers' earnings. The conciliation procedure in the Act of 1938 has not been found to be quite suitable for dealing with disputes of this character both because of the length of time which the proceedings take and lack of finality at the end of the proceedings. A remedy for this will be found in the Labour Court which will be instituted under the new Act to ensure impartial and relatively quick decision in references regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up." (Statement of objects and Reasons.)

For powers, duties and procedure of the Labuur Courts see Chapter XII.

For the qualification for being eligible to be appointed to preside over Labour Courts see Rules.

Industrial Court. 10. (1) The Provincial Government shall constitute a Court of Industrial Arbitration.

(2) The Industrial Court shall consist of three or more members, one of whom shall be its President.

(3) Every member of the Industrial Court shall be a person who is not connected with any industry.

(4) Every member of the Industrial Court shall be a person who is or has been a judge of a High Court or is eligible for being appointed a judge of such Court :

Provided that one member may be a person not so eligible, if

in the opinion of the Provincial Government he possesses expert knowledge of industrial matters.

Legislative Changes.

This section corresponds to S. 24 of the Bombay Industrial Disputes Act. There have been some changes. Provision is made for the appointment of a person possessing expert knowledge of industrial matters as a member of the Industrial Court. Under the old Act all members were to be either High Court Judges or eligible for being appointed as High Court Judges. Under sub-clause (3) of Section 24, the Industrial Court could provide for formation of Benches consisting of one or more of its members and under sub-clause (4) the court might hold its sittings at any place as the President may direct. Both these sub-clauses are deleted here and re-enacted as sub-sections (1) and (2) of S. 92. This court is referred to throughout the Act as the Industrial Court. Under the Bombay Industrial Disputes Act, 1938 the Industrial Court was to consist of two or more members one of whom was to be its President Three Judges were in fact appointed. One of the members was absent and an interesting objection was taken that the Court consisting of two members was not competent to hear the application as a Full Bench. The objection was over-ruled and it was held that so long as there are two members of the Industrial Court present including the President the Court is properly constituted under S. 24.[1] Under this Act the law is changed in as much as the Industrial Court shall consist of three or more members. For powers, duties and procedure of the Industrial Court see Chapter XIII.

---

1. The Gopal Mills Co. Ltd. Vs. The Government Labour Officer Ahmedabad and others. Application No. 4/1944 Bombay Labour Gazette (June 1945) Vol. 24. Page 626.

CHAPTER III.

Registration of Unions.

11. The Registrar may, after making such inquiry as he deems fit, recognise for the purposes of this Act—

Recognition of undertakings and occupations.

(1) any concern in an industry to be an undertaking ;

(2) any section of an undertaking to be an occupation.

Legislative Changes.

Under the Bombay Industrial Disputes Act a section of an industry was to be recognised as an occupation. Under this Act there is a change. The provision as to recognition of a concern as an undertaking is new.

Industry, Undertaking and Occupation.

Under this Act the Registrar may recognise any concern to be an undertaking and any section of an undertaking to be an occupation. Thus the group of textile mills in a local area would form one industry and any concern i. e. a mill may be recognised under this section as an undertaking, while a section of the mill i. e. a department thereof may be recognised as an occupation. By notification No. 1 dated 1-6-1939 sections of the Cotton Textile Industry mentioned therein were recognised as occupation in that industry. See appendix V (7). By notification No. 4 dated 10-10-1939 and notification No. 26 dated 16-1-1940 the sections mentioned therein of silk textile industry and woolen textile industry were recognised as occupations respectively for these industries. See appendix.

Maintenatce of registers and approved list.

12. It shall be the duty of the Registrar to maintain in such form as may be prescribed :-

(a) registers of unions registered by him under the provisions of this Act, and

(b) a list of approved unions.

For form see appendix.

Application for registration.

13. (1) Any union which has for the whole of the period of three months next preceding the date of its so applying under this section a membership of not less than fifteen per cent. of the total number of employees employed in any industry in any local area may apply in the prescribed form to the Registrar for registration as a Representative Union for such industry in such local area,

(2) If in any local area no Representative Union has been registered in respect of an industry, a union which has for the whole of the period of three months next preceding the date of its so applying under this section a membership of not less than five per cent.

of the total number of employees employed in such industry in the said area may apply in the prescribed form to the Registrar for registration as a Qualified Union for such industry in such local area.

(3) If in any local area, neither a Representative Union nor a Qualified Union has been registered in respect of an industry, a union having a membership of not less than fifteen per cent. of the total number of employees employed in any undertaking in such industry in the said area and complying with the conditions specified in section 23 as necessary for its being placed on the approved list may apply in the Prescribed form to the Registrar for registration as a Primary Union for such industry in such local area.

Legislative Changes.

There have been far-reaching changes in the law relating to registration of unions. It has been thoroughly overhauled. Under the Bombay Industrial Disputes Act there was a provision for recognition of unions by the employers. That has been done away with. Also the percentage of membership necessary for being registered as Representative Union has been reduced from 25 per cent. to 15 per cent. of the total number of employees. The qualifying period has been decreased from 6 months to 3 months. The provision for Primary Unions is newly introduced. Industrial Unions and Departmental Unions under the Bombay Industrial Disputes Act have been done away with. " The range of activities of a registered union is enlarged by enabling it to act as a representative on behalf of non-members who may choose such a union for the purpose of representing them in any proceeding " (Statement of Objects and Reasons.)

Representative Union: Qualified Union: Primary Union.

Under the scheme of the Act, provision is made for registration of unions either as a Representative Union, Qualified Union or a Primary Union. Any union having a membership of not less than 15 per cent. of the total number of employees employed in any *industry in any local area* may get registered as a Representative Union. In absence of any such Representative Union in respect of an industry in any local area a union which has a membership of not less than five per cent. of the total number of employees employed in the industry in any local area may get registered as a Qualified Union for such industry in such local area. In absence of both a Representative Union or a Qualified Union in respect of an industry in any local area a new catagory of Primary Unions has been introduced by this Act. A union which has a membership of not less than 15 per cent. of the total number of employees employed in any UNDERTAKING in the industry and which complies with the conditions specified in Section 23 as necessary for being placed on the approved list, may get registered as a Primary Union for such INDUSTRY in such local area. Note that both Representative and Qualified Unions must have as members a percentage of the total number of the employees IN THE INDUSTRY in the local area. a

Primary Union must have a membership of not less than 15 per cent. of the total number of the employees IN AN UNDERTAKING. The conditions regarding Primary Union are more stringent. Note also that all these unions including the Primary Union are the unions for the industry in a local area. When there is a union registered as a representative union, no union can be registered as a Qualified Union or a Primary Union and only when there is no Representative Union then only a Qualified Union can be registered and only in absence of Representative and Qualified unions a Primary Union can be registered. Also mark that there can be only one Registered Union at a time in an industry in a local area. Even if there are two unions fulfilling the conditions necessary for being registered in the same catagory (say as a Representative or Qualified Union) then one having the larger membership shall be registered, and if one union has already been registered, then one having larger membership may apply to have the registration of the former cancelled and the registration will be, on proof thereof be cancelled. The scheme of the Act is that there should be only one union to act as representative of the employees.

Note also that a union mentioned in this chapter must have been necessarily registered under the Indian Trade Unions Act 1926. The provisions of this section relate to the registration under this Act.

Registration under this Act confers various rights on the unions in connection with the representations on behalf of workers. For the right to act as representative of workers see Section 30 of the Act. For the form of application under sub-sections (1) (2) and (3) of Section 13, see Forms.

Registration of Union.

14. On receipt of an application from a union for registration under Section 13 and on payment of the fee prescribed, the Registrar shall, if after holding such inquiry as he deems fit he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied and that the union is not otherwise disqualified for registration, enter the name of the union in the appropriate register maintained under section 12 and issue a certificate of registration in such form as may be prescribed:

Provided:–

Firstly, that in any local area there shall not at any time be more than one registered union in respect of the same industry:

Secondly, that in any local area the Registrar shall in respect of an industry register a union fulfilling the conditions necessary for registration as a Representative Union in preference to one not fulfilling the said conditions, and failing such a union a union fulfilling the conditions necessary for registration as a Qualified Union in preference to one not fulfilling such conditions:

Thirdly, that where two or more unions fulfilling the conditions necessary for registration apply for registration in respect of the same industry in any local area, subject to the provisions of the proviso, the union having the largest membership of employees employed in the industry shall be registered :

Fourthly that the Registrar shall not register any union if he is satisfied that the application for its registration is not made *bona fide* in the interest of the employees but is made in the interest of the employers to the prejudice of the interest of the employees.

COMMENT.

As stated in the notes on section 13 there shall not be more than one registered union in a local area for an industry. The second proviso lays down the order of preference for the registration of the three categories of the unions specified in Section 13. The order of preference for the registration is as follows:-

(1) Representative Union.
(2) Qualified Union.
(3) Primary Union.

When two or more unions of the same category, otherwise fulfilling the conditions for registration, apply for being registered in respect of the same industry in any local area the union having the largest membership of the employees in the industry shall be registered.

Inquiries Under this Chapter are Judicial Inquiries.

Under section 16 (corresponding to Section 118 of this Act) the Registrar is given the same powers as are vested in the Court under Civil Procedure Code for the procedure for conducting inquiries. Such inquiries are therefore of a judicial nature and must be held in the presence of the parties whose interests may be affected by the order of the Registrar.[1]

These remarks apply to the inquiries under Section 14, 15, 16 and 17 held by the Registrar.

For the fees to be paid and the form of certificate of registration to be issued see rules.

Cancellation of registration.

15. The Registrar shall cancel the registration of a union;-

(a) if the Industrial Court directs that the registration of such union shall be cancelled ;

(b) if after holding such inquiry, if any, as he deems fit, he is satisfied -

1. The Bharat Spinning and Weavnig Cc. Ltd. Vs GIRNI Kamgar Sangh Hubli. Appeal No. 1/1945 Bombay Labour Gazette (March 1945) Vol 24 Page 417.

(i) that it was registered under mistake, misrepresentation or fraud ; or

(ii) that the membership of the union has for a continuous period of three months fallen below the minimum required under section 13 for its registration ;

Provided that where a strike or a closure not being illegal strike or closure under this Act in an industry involving more than a third of the employees in the industry in the area has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of three months.

Provided further that the registration of a union shall not be cancelled under the provisions of this sub-clause unless its membership at the time of the cancellation is less than such minimum ; or

(iii) that the registered union being Primary Union has after registration failed to observe any of the conditions specified in section 23 ; or

(iv) that the registered union is not being conducted bona fide in the interests of employees but in the interests of employers to the prejudice of the interest of employees ; or

(v) that it has instigated, aided or assisted the commencement or continuation of a strike which has been held to be illegal ;

XVI of 1926. (c) if its registration under the Indian Trade Unions Act, 1926, is cancelled.

COMMENTS.

This Section corresponds to section 9 of the Bombay Industrial Disputes Act. There have been some changes. The important changes are (a) the insertion of sub-clauses (b) (iii), (b) (v) and sub-clause (c), which are totally new. Under sub-clause (b) (ii) it is provided that the union whose membership has fallen below the minimum for a continuous period of 3 months and whose membership is below the minimum at the time of cancellation shall have its registration cancelled, while under clause (b) of Section 9 of the Bombay Industrial Disputes Act, it was sufficient for cancellation of registration that the membership was less than the minimum at the date of the application for cancellation. Under the Bombay Industrial Disputes Act the application for cancellation could be made only by an employer or a union concerned with the industry or occupation in which the members of the union, the registration of which is sought to be cancelled, are employed. This provision has been deleted in this Act.

Registration of another union in place of existing registered union.

16. (1) If at any time any union (hereinafter in this section referred to as " applicant union ") makes an application to the Registrar for being registered

in place of the union already registered (hereinafter in this section referred to as " Registered union ") for an industry, in a local area, on the ground that it has a larger membership of employees employed in such industry the Registrar shall call upon the registered union by a notice in writing to show cause within one month of the receipt of such notice why the applicant union should not be registered in its place. An application made under this sub-section shall be accompanied by such fee as may be prescribed.

(2) The Registrar shall forward to the Labour Officer a copy of the said application and notice.

(3) If, on the expiry of the period of notice under sub-section (1), after holding such inquiry as he deems fit, the Registrar comes to the conclusion that the applicant union complies with the conditions necessary for registration specified in section 13, and that its membership was, during the whole of the period of three months immediately preceding the date of the application under this section larger than the membership of the registered union, he shall, subject to the provisions of section 14 register the applicant union in place of the registered union.

(4) Every application made under this section shall be published in the prescribed manner not less than 14 days before the expiry of the period of notice under sub-section (1).

COMMENT.

This Section corresponds to section 10 of the Bombay Industrial Disputes Act. Some changes have been made.

When there is any other union having or claiming larger membership of the employees than the registered union in an industry in a local area, and it wants to get itself registered, in place of the registered union, it has to apply under this Section and if the Registrar after holding such inquiry as he deems fit comes to the conclusion that the applicant union has substantiated its claim for larger membership he shall register that union in place of the registered union. (Mark that under section 14 there is to be only one registered union in respect of an industry in a local area)

Application for re-registration.

17. (1) Any union the registration of which has been cancelled on the ground that it was registered under a mistake or on the ground specified in sub-clause (i-i) of clause (b) of section 15 may, at any time after three months from the date of such cancellation and on payment of such fees as may be prescribed, apply for re-registration. The provisions of sections 13 and 14 shall apply in respect of such application.

(2) A union the registration of which has been cancelled on any other ground shall not, save with the permission of the Provincial Government, be entitled to apply for re-registration.

COMMENTS.

This Section corresponds to section 13 of the Bombay Industrial Disputes Act. There are some changes.

It makes provision for the re-registration of unions whose registration has been cancelled under section 15. The Union whose registration has been cancelled on the ground that it was registered under a mistake or on the ground that its membership has fallen below the minimum required under section 13 can apply for re-registration at any time after three months from the date of cancellation. The Union whose registration is cancelled on any other ground than those mentioned above shall be required to take the previous permission of the Provincial Government before applying for re-registration.

Liability of union or members not relieved by cancellation.

18. Notwithstanding anything contained in any law for the time being in force, the cancellation of the registration of a union shall not relieve the union or any member thereof from any penalty or liability incurred under this Act prior to such cancellation.

Periodical returns to be submitted to Registrar.

19. Every registered union shall submit to the Registrar on such dates and in such manner as may be prescribed, periodical returns of its membership.

For the dates on which and the manner in which the returns shall be submitted see rules.

Appeal to Industrial Court from order of Registrar cancelling registration.

20 (1) Any party to a proceeding before the Registrar may within 30 days from the date of an order passed by the Registrar under this Chapter, appeal against such order to the Industrial Court:

Provided that the Industrial Court may for sufficient reasons admit any appeal made after the expiry of such period.

(2) The Industrial Court may admit an appeal under sub-section (1) if on a perusal of the memorandum of appeal and the decision appealed against it finds that the decision is contrary to law or otherwise erroneous.

Legislative Changes.

This section corresponds to section 18 of the Bombay Industrial Disputes Act. Under that Act " a person entitled to appear before the Registrar " could appeal while under this Act " any party to a proceeding before the Registrar " can appeal.

Can an Employer Appear or Appeal ?

Under section 17 of the Bombay Industrial Disputes Act, every employer in the Industry concerned and every representative of the employees whose interests may be affected were entitled to appear at any inquiry made by the Registrar. There is no corresponding provision under this Act. It seems therefore, by reason of the deliberate deletion of the provisions of section 17, that an employer is not entitled to appear in a proceeding under this chapter nor would he be entitled to appeal under this section.

Marginal Notes Wrong.

"*It may be observed that marginal note to this section is not in conformity with the provisions of the section itself.* While the marginal note speaks of appeals from the order of the Registrar cancelling registration of unions, the section itself provides for appeals against any order passed by the Registrar under this chapter. The marginal notes cannot control the clear provisions of the section itself." Therefore all orders of the Registrar under this chapter are appealable.[1]

The discrepancy between the marginal notes and the section existed under the Bombay Industrial Disputes Act and the above decision was under that Act. In spite of this clear ruling of the Industrial Court and the undoubtedly patent defect, the same wrong marginal notes remain unaltered. It is rather a case of slovenly legislation.

Publication of order.

21. Every order passed under Section 14, 15 or 16 and every order passed in appeal under section 20 shall be published in the prescribed manner.

For the manner of publication of orders see rules.

Registration of union for more than one local area.

22. Subject to the foregoing provisions of this Chapter, a union may in the prescribed manner be registered for an industry for more local areas than one.

For the manners of registration of a union for more local areas than one see rules.

---

1. The Bharat Spinning and Weaving Co. Ltd. Vs. The Sarni Kamdar Sangh, Hubli. Appeal 1/1945 Bombay Labour Gazette. (March 1945) Vol. 24 Page 417.

CHAPTER IV.

Approved Unions.

" Government seeks to achieve its declared object of facilitating the organisation of labour by creating a list of approved unions.....

An approved union is invested with substantial privileges but is also required to undertake a corresponding set of obligations in the interests of the stability and the progress of sound trade unionism"

" Provision is made for the maintenance of a list of approved unions and all unions that satisfy among others, certain conditions regarding the regularity of meetings of the executive committee, Government audit of their accounts and the avoidance of resort to strikes so long as means of settlement and conciliation are available under the Act, will be placed on the list. Approved unions will derive substantial advantages under the Act including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expenses in important proceedings before the Labour Court and the Industrial Court". (Statement of Objects and Reasons.)

Approved list: maintenance of: Conditions for being entered in.

23. (1) On an application being made in the prescribed form, by a union for being entered in the approved list, the Registrar may after holding such inquiry as he deems fit enter the union in such list if he is satisfied that the union has made rules, that the provisions of the said rules are being duly observed by the union, and that the rules provide that—

(i) its membership subscription shall be not less than four annas per month;

(ii) its executive committee shall meet at intervals of not more than three months ;

(iii) all resolutions passed, whether by the executive committee or the general body of the union, shall be recorded in a minute book kept for the purpose;

(iv) an auditor appointed by Government may audit its accounts at least once in each financial year ;

(v) every industrial dispute in which a settlement is not reached by conciliation shall be offered to be submitted to arbitration, and that arbitration under Chapter XI shall not be refused by it in any dispute ;

(vi) no strike shall be sanctioned or resorted to by it unless all the methods provided by or under this Act for the settlement of an industrial dispute have been exhausted and the majority of its members vote by ballot in favour of such strike :

Provided that the Registrar shall not enter a union in the approved list if he is satisfied that it is not being conducted *bona fide* in the interest of its members, but to their prejudice.

Explanation.– " Member " for the purposes of clause (vi) means a member of the union for the purposes of the Indian Trade Unions Act, 1926. XVI of 1926

(2) The Provincial Government may by notification in the *Official Gazette* direct that in the case of any union or class of unions specified in the notification the membership subscription may, subject to a minimum of two annas per month, be less than four annas.

(3) Notwithstanding anything contained in sub-section (1) there shall not at any time be more than one approved union in respect of any industry in a local area.

(4) Any union complying with the conditions specified in sub-section (1) and having a larger membership in an industry in a local area than an approved union for such industry shall on application in that behalf be entered in the approved list in place of such approved union.

COMMENTS.

This chapter cuts a totally new ground and provides for a totally new class of unions called approved unions. Those unions which satisfy the conditions laid down in sub-clause (1) would be entitled to be placed in the approved list

We have seen in Chapter III which deals with registration of unions that there are three categories of unions so far as registration of unions under this Act is concerned: Representative, Qualified and Primary. We have also seen that there can be only one Registered union at a time in any local area in respect of an industry. The registration under the Act gives rights to represent the employees and has been meant for that purpose. Now this chapter makes provision for the ' approved unions'. It should be marked that any union whether registered under this Act or not can apply for bsing put on a list of approved unions. It is not necessary that the union applying for being put on an approved list must be necessarily registered under the provisions of this Act. It is sufficient that a union applying under this chapter satisfies the conditions laid down in section 23. Thus when there is a union registered under this Act in respect of an industry for a local area and if it does not

apply for registration as an approved union under this chapter or is not eligible to apply as approved union, any other union in the locality which is a union registered under the Indian Trade Unions Act can apply for being placed on the approved list.

The result would be that such a union would be and the registered union would not be entitled to all the privileges conferred upon it under this Chapter. Of course an approved union, if it is not also a registered union, will not get the rights and privileges of a registered union under the Act including the right to represent the employees. Mark that there can be only one approved union in respect of an industry in a local area. If there are two unions applying for being placed on the approved list, the union having the larger membership of employees in an industry in a local area shall be entered in the approved list provided it satisfies the conditions specified in section 23.

For the form of application see rules.

Removal from approved list.

24. The Registrar shall remove a union from the approved list if the registration under the Indian Trade Unions Act, 1926, is cancelled, and may also so remove a union if after holding such inquiry if any as he deems fit, he is satisfied that it–

(i) was entered in the list under mistake, misrepresentation or fraud, or

(ii) has, since being included in the approved list, failed to observe the conditions specified in section 23.

Rights of Officers of approved unions.

25. Such officers of an approved union as may be authorised by rules made in this behalf by the Provincial Government shall, in such manner and subject to such conditions as may be prescribed, have a right, and shall be permitted by the employer concerned–

(a) to collect sums payable by members to the union on the premises where the wages are paid to them ;

(b) to put up or cause to be put up a notice board on the premises of the undertakings in which its members are employed and affix or cause to be affixed notices thereon ;

(c) for the purpose of the prevention or settlement of an industrial dispute–

(i) to hold discussions on the premises of the undertaking with the employees concerned who are the members of the union ;

(ii) to meet and discuss with an employer or any person appointed by him for the purpose the grievances of its members employed in his undertaking :

(iii) to inspect, if necessary, in any undertaking any place where any member of the union is employed.

COMMENTS

For the officers who may be authorised and the manner in which and conditions subject to which the rights under this section shall be authorised see rules.

26. (1) An approved union entitled to appear;-

Legal aid to approved unions at Government expenses in important proceedings.

(a) before a Labour Court in a proceeding for determining whether a strike, lock-out or change is illegal, or

(b) before the Industrial Court in a proceeding involving in the opinion of the Court an important question of law or fact,

may apply to the Court for the grant of legal aid at the expense of the Provincial Government.

(2) A copy of every application made under sub-section (1) shall be sent to the Registrar with the least practicable delay.

(3) The Court to which an application is made under sub-section (1) may fix for the hearing of the application a day of which at least three days' clear notice shall be given to the Registrar.

(4) On the day fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses, if any, produced by the union and the Registrar, and may also examine the officers of the union, and shall make a memorandum of the substance of such evidence.

(5) The Court may after considering the evidence adduced under sub-clause (4) either grant or refuse the application.

(6) The Provincial Government may in consultation with the Industrial Court prescribe the fees for legal advice to, and appearance on behalf of a union before a Court.

(7) For the purpose of this section, legal aid includes advice to the union and the appearance before a Court of a legal practitioner on behalf of the union.

For the fees prescribed under sub-section (6) of section 26 see rules.

CHAPTER V.

Representatives of Employers and Employees, and appearance on their behalf.

This chapter deals with the representation of employers and employees. The scheme of the Act is that the employers and the employees should settle the disputes between them by agreement, conciliation and arbitration as far as possible. But there may be a number of employers in any industry and there will always be numerous employees, and it will be difficult, nay, next to impossible, to negotiate with each of them. Therefore there must be some one to act on behalf of them, to enter into agreement, settlements or submissions to arbitration; in short, to represent them in the proceedings under the Act. This chapter lays down rules for the representation of the employers and employees.

Recognition of combination of employers as association of employers.

27. (1) The Provincial Government may from time to time by notification in the *Official Gazette* :-

(a) recognise any combination of employers in an industry whether incorporated or not as an association of employers for the purposes of this Act, provided that one of the objects of such combination is the regulation of conditions of employment in the industry ;

(b) withdraw any recognition granted under clause (a) ;

Provided that no recognition shall be withdrawn unless an opportunity has been given to such association of employers to be heard.

(2) In any proceeding under this Act an association of employers shall be entitled to represent—

(a) any employer who is a member of the association ;

(b) any employer connected with the same industry not being a member of the association, who has intimated in writing to the prescribed authority that he has agreed to be represented by the association in such proceeding ;

and any notice or intimation given by or to such association shall be deemed to have been given by or to every employer it is entitled to represent.

(3) Where more employers than one are affected or under any of the provisions of this Act deemed to be affected, and no association of employers is under sub-section (2) entitled to represent all

of them, the representative determined in the prescribed manner shall be entitled to act as their representative.

Legislative Changes.

This section corresponds to section 74 of the Bombay Industrial Disputes Act, but the provisions of this section are made exhaustive.

Representation of Employers.

An association of the employers recognised by the Provincial Government under sub-section (1) of section 27 would be entitled to represent in any proceedings under this Act (1) its members and (2) those non-members who have intimated in writing to the prescribed authority that they have agreed to be represented by such association in such proceeding.

If there is no association of employers entitled to represent the employers, then the representative shall be determined in accordance with the rules prescribed under the Act.

Election of representatives of employees.

28. (1) Where there is no Representative Union in respect of any industry in any local area, the employees in each undertaking in the industry and in each occupation therein may, in the prescribed manner, elect five persons from among themselves to represent them for the purposes of this Act :

Provided that no such persons shall be elected for any occupation the number of employees in which does not exceed ten.

(2) The persons, if any, elected under sub-section (1) shall function in such manner as may be prescribed.

(3) Within twelve months from the date on which an election under sub-section (1) is held, and within each succeeding twelve months thereafter, a fresh election shall be held ;

Provided that any person may be re-elected at any such election.

(4) The employees may in the prescribed manner recall any or all of the persons elected under sub-section (1) or (3).

(5) Vacancies in the number of the persons elected under sub-section (1) or (3) shall be filled by election in the prescribed manner.

Elected Representatives of Employees.

This section provides for the election of the representatives of the employees. Such election is to be made only when there is no Representative Union in respect of an industry in any local area. For when there is a Representative Union in respect of an industry in a local area, the Represen-

tative Union is entitled to represent all the employees in the industry in such local area under section 30 of the Act and therefore it would not be necessary to elect representatives of the employees when there is a Representative Union.

These representatives of the employees are to be elected in the manner prescribed by the rules under this Act. There are to be annual fresh elections of representatives. This is a notable departure from the provisions of the Bombay Industrial Disputes Act. Under that act the representatives were elected only for a particular dispute and once the dispute was over they were *functus officio* and for a new dispute or act, a fresh election was necessary. The industrial Court had held that the elected representatives were not a sort of standing committee of workers.[1]

" But under this Act annual election of representatives of employees is provided for in lieu of the present system of election of representatives for a particular dispute only" (Statement of objects and Reasons). Under this Act they would be a sort of a Standing Committee of Workers.

Under the Bombay Industrial Disputes Act it was held that if an elected representative of the employees leaves service he will not be able to act as a representative of employees. For a representative of employees must be an employee who continues to be so throughout the proceedings. An employee can represent other employees only so long as he himself continues and remains an employee.

It was also held " if there is a vacancy in the elected representatives, such vacancy among them must be properly filled up and the remaining representatives cannot act as such unless such vacancies are filled up. It may be open to the workers to elect any representatives who may not be more than five but if after the five representatives are elected, any vacancies occur among them, the remaining representatives cannot act as the elected representatives of the workers in as much as the workers had appointed the five persons as a body in whom they had confidence as their representatives. In a reference which came before the Court, it was observed as follows :

" There is some force in the contention of the mills that the representatives must act jointly. Some of the representatives that may have died or left service may have been the most trusted representatives, and the remaining representatives can then hardly be said to be the real representatives of the employees [Labour Gazette (Sept. 1944.) page 55]. We adhere to the same view."[2]

It seems the principles laid down in the above decision are good law under this Act also.

1. In the matter of termination of a Registered Agreement dated 9-1-1942 by the elected representatives of the Podar Mills Co. Ltd. Bombay Labour Gazette (Sept. 1944) Vol. 24 Page. 55

2. The Tata Mills Ltd. Vs. The Government Labour Officer. Appl. no. 1/1946 Bombay Labour Gazette (July 1946) Vol. 25 Page. 855.

An application for a declaration that the opponents are not the representatives duly elected of the employees and an injunction restraining them from representating themselves as representatives can not be entertained.[1]

For the manner in which the persons are to be elected under sub-section (1), recalled under sub-section (4), the period for which they shall function and the manner. in which the vacancies shall be filled up under section 28 (5) see rules.

Act or decision of majority to be deemed to be act or decision of all.

29. Any act or decision of the majority of the persons elected under section 28 by any employees shall be deemed to be the act or decision of all the persons so elected by them.

Representative of employees.

30 The following shall be entitled to act in the order of preference specified as the representative of employees in an industry in any local area—

(i) a Representative Union for such industry ;

(ii) a Qualified or Primary Union of which the majority of employees directly affected by the change concerned are members ;

(iii) any Qualified or Primary Union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned;

(iv) the Labour Officer if authorised by the employees concerned ;

(v) the persons elected by the employees in accordance with the provisions of section 28 or where the proviso to sub-section (1) thereof applies, the employees themselves ;

(vi) the Labour Officer ;

Provided—

Firstly, that the persons entitled to act under clause (v) may authorise any Qualified or Primary Union in respect of such industry to act instead of them :

Secondly, that where the Labour Officer is the representative of the employees he should not enter into any agreement under section 44 or settlement under section 58 unless the terms of such

1. The Silver Cotton Mills. Co. Ltd. Vs. The Government Labour Officer, Ahmedabad. Appl. no. 38/1942 Bombay Labour Gazette (Aug. 1942) Vol. 21 Page. 1194.

agreement or settlement, as the case may be, are accepted by them in the prescribed manner :

Thirdly, where in any proceeding the persons entitled to act under clause (v) are more than five, the prescribed number elected from amongst them in the prescribed manner shall be entitled to act instead.

Legislative Changes.

The corresponding section under the Bombay Industrial Disputes Act was section 3 (29). It was included in the section dealing with definitions under that Act. It has been now allotted a special section and there have been far-reaching and substantial changes and they have been noted in the comments below.

Proviso (2) to this section embodies substantially the provisions of section 31 and section 35 (5) of the Bombay Industrial Disputes Act.

Scope of the section.

This section lays down the order of preference of those entitled to represent the employees One standing higher up in the order is entitled to act as a representative to the exclusion of those standing lower in the order.

This is a very important section of the Act and determines who would be entitled to act as representative of employees under the Act. The representative of the employees has got substantial rights and privileges under the Act.

Representative Union.

The first and foremost in the order of preference for those entitled to represent the employees is the Representative Union. It represents all the employees in an industry in a local area. Note that it represents all employees including those who are not its members A Representative Union must have a membership of not less than 15 per cent of the total number of employees in an industry in a local area and thus only a minority of the total employees (of course not less than 15 per cent.) may be its members, yet by virtue of this section it is entitled to act as a representative of each and all employees whether they are its members or not, in the industry in such local area.

This is a special privilege given to a Representative Union under the Act.

Under Section 3 (29) of the Bombay Industrial Disputes Act, a Representative Union could not act as a representative of the employees, only if some of the employees directly affected by the change were its members. That provision is deleted in this Act. Under this Act a Representative Union can act as a Representative of the employees even if none of the employees directly affected by the change is its member. Ordinarily a trade union can represent only its members but by virtue of section 30 (1) a Representative Union is entitled to act as a representative not only of its members but also

of all other non-member employees in the local area. And as a reprentative of the employees it can send or receive notices on their behalf, enter into agreements, settlements, be party to submissions, arbitrations and award and these will be binding upon all the employees in the industry in such local area. The Representative Union has a special place in the scheme of the Act. A Representative Union represents not only the present employees in the industry in the local area but also represents the persons who may be employed in future and an agreement etc. to which a Representative Union is a party would be binding upon them and they would be entitled to the benefit thereof.[1]

Representation of employees.

The Textile Labour Association Ahmedabad as the Representative Union gave a notice of change for increase in wages ; the conciliation proceedings pursuant to this notice failed and terminated on 10-2-40. Thereafter workers of some mills went on strike for substantially the same demand of increase in wages though in spite of the exhortations of the Textile Labour Association not to resort to strike. In the proceedings taken by the mills to declare it to be an illegal strike it was contended on behalf of the mills that no notice of change was given by the workers who went on strike. It was held overruling the contention that the Textile Labour Association being a Representative Union was the representative of all employees in the industry at Ahmedabad including the opponents and therefore notice of change given by the Textile Labour Association was given on behalf of them and therefore the strike having been commenced after the conciliation proceedings were over was not illegal.[2]

Notice to employees.

The Representative Union being a representative of all employees, a notice served upon the Representative Union must be deemed to be a notice served on all the employees in the industry.[3]

Sub-clause II.

A Qualified or Primary Union can act as a representative in the following circumstances.

(1) When there is no representative union and

(2) When majority of employees directly affected by the change concerned are its members.

(3) When elected representatives of the employees authorise it to act instead of them.

---

1. Government Labour Officer Ahmedabad Vs. Ananta Mills Co. Ltd. Appn. No. 33/1941 Bombay Labour Gazette. (Oct. 1941) Vol. 21 Page 153.

2. The Ahmedabad Mill Owners' Association Vs. The Mill Kamdar Union Ahmedabad. Appn. No. 3/1940 Bombay Labour Gazette (April 1940) Vol. 19 Page 686.

3. The Textile Labour Association Ahmedabad. Vs. The Shri Ambica Mills Co. Ltd. No. 1 and 2. Appn. No. 55 and 56 of 1940. Bombay Labour Gazette. (Jan. 1941) Vol. 20 Page 351.

Majority of employees affected are its members.

Under section 3 (29) (I) of Industrial Disputes Act, a registered union could be a representative of the employees if "the majority of employees directly affected by a change are its members" which are words exactly similar to the words used in section 30 (II). These words were interpreted in the following case ; "In ascertaining who is the representative of employees it is not necessary to see what proportion of the total number of employees is affected by the change. One has got to make the employees directly affected by the change as the basis or unit for computing and if majority of the members comprising that unit are members of a registered union then the registered union would be a representative of the employees.[1]

Sub-clause IV

When the number of elected representatives is more than 5, then these persons have to elect from among them persons to act as representatives. Rules under the Act provide for such election.

Labour officer.

The Labour Officer represents in the last resort all the employees in an industry in a local area.[2]

Therefore whenever the employer has to give an intimation to employees in general, the only person to whom he can give intimation is the Labour Officer in absence of any one having a preferential right of acting as a representative of employees.[3]

The Government Labour Officer is the representative of the employees. Thus where it was contended that the mills could not serve the notice of discharge personally on the employee, held that the notice should have been sent to the Labour Officer, he being the representative of the employees.[4]

In an application for a declaration that a strike was illegal, it was contended that all the employees who had gone on strike should have been made parties. The Government Labour Officer had been made a party. Held that the Government Labour Officer was a representative of the employees as there were no elected representatives of the employees [5]

For the manner of authorising a Qualified or a Primary Union under clause (III), for the manner of accepting the terms of an agreement or settlement under proviso two and for the number of representatives and the

1 The Textile Labour Association Ahmedabad. Vs. The National Mills. Co. Ltd. Appn. No. 63/1940 Bombay Labour Gazette (April 1941) Vol. 20. Page 633.

2 The Textile Labour Association Ahmedabad Vs. The Shree Ambica Mills Co. Ltd. Nos. 1 & 2 Appl No 55/1940 Bombay Labour Gazette (Jan. 1941) Vol 20 Page 351.

3. The Mills Owners' Association Bombay Vs. Baboo Shamji and others. Appn. No. 2/1940 Bombay Labour Gazette (March 1940) Vol. 20 Page. 592.

4. Nurkhan Mirkhan Vs. Ahmedabad New Textile Mills Co. Ltd. Appn-No. 72/1943 Bombay Labour Gazette. (Oct. 1944) Vol. 24 Page 107

5. The Niranjan Mills Co. Ltd. Surat Vs. The Government Labour Officer and others. Appn. No. 73/1943 Bombay Labour Gazette (Dec. 1943) Vol. 23. Page 273.

manner of their elections under proviso three to section 30, see rules.

Certain unions to continue to act for some time as representatives of employees.

31. Notwithstanding anything contained in this Act, a registered or representative union entitled under the Bombay Industrial Disputes Act, 1938, to act as a representative of employees immediately before the application of this Act to the industry concerned shall continue to be so entitled for a period of six months from the date of its application thereto or until a representative of employees becomes entitled to act as such under section 30, whichever is earlier.

Explanation :—For the purposes of this section the expression Bom XXV of 1938 "registered union" and "representative union" have the meanings respectively assigned to them in the Bombay Industrial Disputes Act, 1938.

Persons who may appear in proceedings

32. (1) A Conciliator may, if he considers it to be necessary for the proper discharge of his functions permit any individual, whether an employee or not, to appear in any proceeding before him.

(2) The provisions of sub-section (1) shall apply so far as may be to a Board, an Arbitrator, a Labour Court and the Industrial Court.

Representation of employees.

33. Notwithstanding anything contained in any other provision of this Act, an employee shall be entitled to appear through any person,—

(a) in all proceedings before the Industrial Court;

(b) in proceedings before a Labour Court for deciding whether a strike, lock-out or change or an order passed by an employer under the standing orders is illegal;

(c) in such other proceedings as the Industrial Court may, on application made in that behalf, permit:

Provided that a legal practitioner shall not be permitted under clause (c) to appear in any proceeding under this Act except before a Labour Court or the Industrial Court.

CHAPTER VI.

Powers and duties of Labour Officer.

34. (1) A Labour Officer shall exercise the powers conferred, and perform the duties imposed on him by or under this Act.

Powers and duties of Labour Officer.

(2) For the purpose of exercising such powers and performing such duties a Labour Officer may, subject to such conditions as may be prescribed, at any time during working hours, and outside working hours after reasonable notice, enter and inspect—

(a) any place used for the purpose of any industry;

(b) any place used as the office of any union;

(c) any premises provided by an employer for the residence of his employees,

and shall be entitled to call for and inspect all relevant documents which he may deem necessary for the due discharge of his duties and powers under this Act.

(3) All particulars contained in or information obtained from any documents inspected or called for under sub-section (2) shall, if the person in whose possession the document was so requires, be treated as confidential.

(4) A Labour Officer may, after giving reasonable notice, convene a meeting of employees for any of the purposes of this Act, on the premises where they are employed, and may require the employer to affix a written notice of the meeting at such conspicuous place in such premises as he may order and may also himself affix or cause to be affixed such notice. The notice shall specify the date, time and place of the meeting, the employees or class of employees affected, and the purpose for which the meeting is convened:

Provided that during the continuance of a lock-out which is not illegal, no meeting of employees affected thereby shall be convened on such premises without the employer's consent.

(5) A Labour Officer shall be entitled to appear in any proceeding under this Act.

(6) It shall be the duty of the Labour Officer to—

(a) watch the interests of employees and promote harmonious relations between employers and employees ;

(b) investigate the grievances of employees and represent to employers such grievances and make recommendations to them in consultation with the employees concerned for their redress ;

(c) report to the Provincial Government the existence of any industrial dispute of which no notice of change has been given, together with the names of the parties thereto:

Provided that the Labour Officer shall not–

(a) appear in any proceeding in which the employees who are parties thereto are represented by a Representative Union,

(b) where there is a Representative Union for an industry in a local area, except at the request of the union, act under clause (b) of sub-section (6) in respect of the employees.

COMMENTS.

This section corresponds to section 25 of the Bombay Industrial Disputes Act with certain alterations. "The powers and duties of the Labour Officer are expanded so as to enable him to function more efficiently."

(Statement of Objects and Reasons)

For the conditions subject to which the powers of entry and inspection shall be exercised under sub-section (2) see rules.

CHAPTER VII.

Standing Orders.

Before the enactment of the Bombay Industrial Disputes Act 1938, there was a complete absence of any rules regulating the relations of the employers and the employees in an industry. The conditions of employment including discharge, dismissal, leave, holidays, working condition, permanency in service etc., depended entirely upon the whim and caprice of the employers which caused great amount of bitterness and strife. The "Industrial Strike" as a means to secure redress of grievances and alterations in the existing conditions of employment has been the most outstanding feature of the relations between the employers and the employed. Therefore it was deemed desirable that there should be binding rules regulating the relations of the employers and the employees in an industry. Provision was therefore made in the Bombay Industrial Disputes Act for settlement of such rules which are called Standing Orders. Under the Bombay Industrial Disputes Act, section 26 provided for settlement of the Standing Orders. That section was included in the chapter providing for changes. Under the present Act the provisions have been made exhaustive and extensive and a special chapter has been allotted for that purpose. One of the most notable change made by the present Act is regarding the procedure for making an alteration in the Standing Orders. Under the old Act if any party desired a change in any Standing Order, he had to give a notice of change to the other party and the procedure for effecting a change had to be followed, i. e. if the parties did not come to an agreement in respect of the proposed change in the Standing Orders, conciliation proceedings had to be resorted to and if these proceedings failed, the employer, was entitled to effect the change and to enforce such change by a lock-out while the employees were at liberty to resort to a strike to enforce or resist the change. Under the provisions of this Act this matter of alteration in Standing Orders has been entirely taken out of the hands of the parties. Any party desiring to make a change in the Standing Orders has to apply to the Commissioner of Labour under section 38 and his decision, subject to the provisions of appeal and Review by the Industrial Court, will be final and binding upon the parties.

Settlement of Standing Order by Commissioner of Labour.

35. (1) Within six weeks from the date of the application of this Act to an industry every employer therein shall submit for approval to the Commissioner of Labour in the prescribed manner draft standing orders regulating the relations between him and his employees with regard to the industrial matters mentioned in Schedule I.

Provided that where an undertaking in an industry is started after the application of this Act to such industry, the draft standing

orders shall be submitted within six months of the starting of the undertaking.

(2) On receipt of the draft standing orders the Commissioner of Labour shall, after consulting in the prescribed manner the representative of employees and employers and such other interests concerned in the industry and making such inquiry as he deems fit, settle the said standing orders.

(3) The Commissioner of Labour shall forward a copy of the standing orders so settled to the Registrar, who shall within fifteen days of their receipt record them in the register kept for the purpose.

(4) Standing orders so settled shall come into operation from the date of their record in the register under sub-section (3).

(5) Until standing orders in respect of an undertaking come into operation under the provisions of sub-section (4), model standing orders, if any, notified in the *Official Gazette* by the Provincial Government in respect of the industry shall apply to such undertaking.

Legislative changes.

This section corresponds to sub-section (1), (2), (3) of section 26 of the Bombay Industrial Disputes Act. Under that Act the period for submission of draft Standing Orders was two months from the date of application of that section to the industry. It has now been reduced to six weeks. The proviso to sub-section (1) is new. In sub-clause (2) the words "after consulting in the prescribed manner, the representative of the employees and employers and such other interests concerned" have been substituted for "after consulting all interests concerned". Sub-sections (3) and (4) have been redrafted and lay down as to when the standing orders come into operation The Sub-section (5) relating to model Standing Orders is new.

Every employer in an industry to which this Act has been made applicable has to submit to the Commissioner of Labour, draft standing orders within six weeks from the date of application of the Act, for his approval. If an undertaking is started after the Act has been made applicable to the industry, draft Standing Orders are to be submitted within six months of the starting of such undertaking. While considering the effect of Section 35, we have to take into account the provisions of Proviso (b) to section 122 which deals with the standing orders already settled under the B. I. D. Act. This proviso among other things provides that any Standing Order settled under the provisions of the Bombay Industrial Disputes Act shall be deemed to have been settled by the appropriate authority under the corresponding provisions of this Act. Therefore for an industry to which the Bombay Industrial Disputes Act was made applicable, and for which Standing Orders had been already

settled, such Standing Orders shall be deemed to have been made by the appropriate authority under the provisions of this Act. Putting in a simple language, the Standing Orders settled under the Bombay Industrial Disputes Act are the Standing Orders under this Act, and the employer shall not have to submit draft standing orders for the approval of the Commissioner of Labour under this section. The old Standing Orders will remain in force.

Under the Bombay Industrial Disputes Act, Standing Orders have been settled as follows:

(1) Standing Orders for the operatives in the cotton textile mills in the areas of Bombay city, Kurla, Gokak, Poona, and Sholapur;

(2) Standing Orders for the operatives in the cotton textile mills in the areas of Ahmedabad, Viramgam, Nadiad and Surat;

(3) Standing Orders for clerks in cotton textile mills in the areas of Bombay City, Kurla, Gokak, Poona, Sholapur, Ahmedabad, Nadiad and Surat. The Standing Orders for cotton mills in other areas as well as silk and woolen mills have also been settled. The Standing Orders for the cotton textile mills in Bombay City and other places mentioned in (1) and the standing orders for the cotton textile mills in Ahmedabad and other places mentioned in (2) have been given in Appendix. The Standing Orders for other centres are practically the same with slight changes. The Standing Orders for clerks have also been given in Appendix IV.

It may be noted that the Standing Orders are for regulating the relation of the employer and his employees with regard to the industrial matters mentioned in Schedule (1) and are determinative of the relation of the employer and his employees with regard to these matters i. e. industrial matters mentioned in Schedule (1).

When there are no Standing Orders, the relations between the employees and mills are covered by the Bombay Industrial Disputes Act (now the present Act) without any assistance to be derived from the framing of the Standing Orders.[1]

For the manner of submission of draft Standing Orders under sub-section (1) and the manner of consulting the representatives of employees and other interests under sub-section (2) of section 35 see rules.

Appeal to Industrial Court.

36. (1) Any person aggrieved by any standing orders settled by the Commissioner of Labour under sub-section (2) of section 35 may within thirty days from the date of their coming into operation appeal to the Industrial Court;

Provided that the Industrial Court may for sufficient cause, admit any appeal after the expiry of the period of thirty days.

(2) On an appeal being filed, the Industrial Court may on the

1. Kalimohan Bhomik Vs. The Jam Hosiery Works, Appl. No. 153/1943 Bombay Labour Gazette (Aug. 1944) Vol. 23 Page 753.

application of any party to such appeal and on such conditions as it may think fit stay the operation of all or any of such standing orders until the appeal is decided.

(3) The Industrial Court in appeal may confirm, modify, add to or rescind all or any of such standing orders.

(4) The Industrial Court shall fix the date on which all or any of the standing orders settled by it under sub-section (3) shall come into operation.

(5) A copy of the orders passed by the Industrial Court under sub-section (3) shall be sent to the Registrar who shall record them in the register referred to in sub-section (3) of Sec. 35.

Legislative changes.

This section corresponds to sub-sections (4), (5), (6) and (7) of the section 26 of the Bombay Industrial Disputes Act. The time for making an appeal to the Industrial Court has been increased from 15 days under that Act to 30 days. Proviso to Sec. 36 (1) is new.

Review.

37. (1) Any person aggrieved by a decision of the Industrial Court under Section 36 may within thirty days from the date of the decision apply to the Industrial Court for a review of the said decision.

(2) The Industrial Court shall not grant such application unless it is satisfied that there has been a discovery of new and important matter or evidence which after the exercise of due deligence was not within the knowledge of the party making the application or could not be produced by him at the time when its decision was made, or that there has been some mistake or error apparent on the face of the record or that there is any other sufficient reason for granting such application.

(3) The provisions of sub-sections (2), (3), (4) and (5) of section 36 shall, so far as may be, apply to proceedings under sub-section (1) in the same manner as they apply to an appeal against standing orders settled by the Commissioner of Labour under sub-section (2) of section 35.

No alteration in standing orders for one year.

38. (1) No alteration shall be made for a period of one year from the date of its coming into operation in any standing order settled under any of the foregoing provisions of this Chapter except by the Industrial Court in appeal or review, where such appeal or review lies.

(2) Any employer or employee may apply to the Commissioner of Labour for a change in:—

(a) any standing order settled under sub-section (2) of section 35, which has not been appealed against, or

(b) any standing order settled in appeal under sub-section (3) of section 36, in respect of which no application for review has been made, or

(c) any standing order settled in review under section 37,

after the expiry of one year from the date of such standing order coming into operation.

Alteration in standing orders.

39. (1) On receipt of an application under sub-section (2) of section 38 the Commissioner of Labour shall, after giving the other party an opportunity of being heard and after consulting such other interests in the industry as in his opinion are affected, pass such order as he deems fit, and, if the order effects an alteration in any standing order, forward a copy of the standing order as so altered to the Registrar who shall, within fifteen days of its receipt record in the register referred to in sub-section (3) of section 35. The standing order as so altered shall come into operation from the date of its record in the register.

(2) The provisions of section 36, 37 and 38 shall, so far as may be, apply to an order passed by the Commissioner of Labour under sub-section (1) in the same manner as they apply to standing orders settled under sub-section (2) of section 35.

Legislative changes.

This provision is completely new. As mentioned in our comments above this is a notable departure from the provisions of the Bombay Industrial Disputes Act relating to change in Standing Orders.

Alteration in standing orders.

Where the demand of the operatives was that the unclaimed wages be paid to them on a particular day instead of the day fixed by the management according to Standing Order No. 8, held the demand of the workers was not that the standing order as it stood should be changed. Their demand was that the unclaimed wages should be paid to them on the particular day on which they demanded. Even though under the Standing Order, the management was to pay the unclaimed wages on a Thursday, they wanted their unclaimed wages *in this particular case* on a day other than the day fixed by the management That being so, the workers' demand would not constitute a request for change

in the Standing Order as such.[1]

Standing orders to be determinative.

40. (1) Standing orders in respect of an employer and his employees settled under this Chapter and in operation, or where there are no such standing orders, model standing orders, if any, applicable under the provisions of sub-section (5) of section 35 shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I.

(2) Notwithstanding anything contained in sub-section (1) the Provincial Government may refer, or an employee may apply in respect of, any dispute of the nature referred to in clause (a) of paragraph A of section 78, to a Labour Court.

Act XX of 1946 not to apply to certain industries.

41. The provisions of the Industrial Employment (Standing Orders) Act, 1946, shall not apply to any industry to which the provisions of this Chapter are applied.

1. The Mill Owners' Association Bombay Vs. The Government Labour Officer and others Appl. No. 5/1940 Bombay Labour Gazette. (April 1940) Vol. 19 Page 693.

CHAPTER VIII.

Change.

The object of the Act is the peaceful settlement of industrial disputes and avoidance of strikes and lock-outs as a means to enforce changes in industrial matters as far as possible. Therefore it makes provision for compulsory discussion and negotiation for the settlement of disputes. So this chapter lays down that if an employer wants to make a change in specified industrial matters or if an employee desires to effect a change in specified industrial matters, a notice must be given to the other party of the proposed change and if an agreement is reached as regards the proposed change, so far so good and the matter ends there ; and the parties would be bound to act in accordance with the agreement. If no agreement is reached then conciliation proceedings under chapter (X) must be instituted and the Government Conciliator will attempt to bring about settlement as regards the proposed change. If settlement is reached, it will be binding upon the parties. If no settlement is reached then and then alone and not before that, the employer will be at liberty to effect the change or to declare a lock-out to enforce it and the employees will also then be at liberty to resort to a strike to enforce or resist the change as the case may be. Provision is made for referring the matter to arbitration but reference to arbitration is voluntary and the parties are not bound to refer the matter to arbitration. But the Provincial Government is empowered to make a compulsory reference to arbitration of industrial disputes under certain circumstances mentioned in Section 73 of the Act.

Where the matter has been referred to arbitration, the change, lock-out or strike cannot be made or declared before the award is made; nor in contravention of the award.

Notice of change.

42. (1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case.

(2) An employee desiring a change in respect of an industrial matter not specified in Schedule I or III shall give notice in the

prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceeding within the meaning of section 63. If, at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change similar in all material particulars, he shall give fresh notice in the manner provided in sub-section (1) or (2) as the case may be.

(4) Any employee desiring a change in respect of (i) any order passed by his employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, shall make an application to the Labour Court;

Provided that no such application shall lie unless the employee has in the prescribed manner approached his employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

Legislative Changes.

This section corresponds to section 28 of the Bombay Industrial Disputes Act. But there have been very material changes. Under the Bombay Industrial Disputes Act an employer or employee desiring a change in any standing order had to give a notice under sub-sections (1) and (2) of Section 28. But that provision is deleted and the procedure for alteration in a standing order has been provided for in section 38 of this Act ; i. e a party desiring a change in any standing order has to make an application to the Commissioner of Labour.

The words "not being a change the effecting of which has for the purpose of the Factories Act become lawful by reason of a notification issued under section 8 thereof" which were inserted in sub-section (1) of section 28 of the Bombay Industrial Disputes Act by the Amendment Act XVI of 1941 have been omitted. Another far-reaching change is that the words "an employee desiring a change in any such standing order or in respect of any other industrial matter" in section 25 (2) of the Bombay Industrial Disputes Act have

been replaced by the words, "a change in respect of an industrial matter not specified in Schedule I or III."

In sub-section (3) for the words, "after conciliation proceedings.....have been completed," the words, "when no settlement is arrived at etc." have been substituted. Sub-Section (4) is new and the provision for an application to the Labour Court is an innovation.

Scope of the section.

Section 42 (1) lays down the procedure to be followed by an employer intending to effect any change in respect of an industrial matter specified in Schedule II. Section 42 (2) lays the procedure to be followed by an employee desiring a change in respect of an industrial matter not specified in schedule I or III. Section 42 (4) lays down the procedure to be followed by an employe desiring a change in respect of any order passed by his employer under Standing Orders, or any industrial matter arising out of the application or interpretation of the Standing Orders, or an industrial matter specified in Schedule III.

If an employer desires to effect a change in an industrial matter specified in Schedule II, he shall give notice under section 42 (1) and follow the procedure laid down in this chapter and the chapter X which relates to the conciliation proceedings to be held with a view to the settlement of the dispute. If the conciliation proceedings have terminated without a settlement having been reached, the employer can effect the change provided that subject matter of the change is substantially in issue in the conciliation proceedings.[1]

But the change must be made within two months of the completion of the conciliation proceedings. [Section 46 (2)]. If he however makes a change in such matter without following the procedure provided for, he would be guilty of illegal change under section 46. The punishment for illegal change has been provided for by section 106.

Section 42 (1) provides for a notice of change when the employer desires a change in industrial matters mentioned in Schedule II. But if he desires a change in industrial matters not specified in Schedule II then provisions of this chapter are not applicable and no notice is necessary. Then the question is how can he make a change in such matters (i. e. industrial matters not specified in Schedule II.) ?

Such matters may fall under Schedule I or Schedule III or may not fall under any of the Schedules. If such matter falls under Schedule III or does not fall under any Schedule, he can make the change at once without any procedure or ceremony. Standing Orders are settled with regard to industrial matters mentioned in Schedule I and if the matter is regulated by a Standing Order, he has to act according to the provisions thereof, and cannot make a change in contravention thereof. If any employee intends to effect a change in respect of industrial matters not specified in

1. Pundlik Mukund Vs. The Mill Owners' Association Bombay and others. Appn. No. 4/1940 Bombay Labour Gazette. (April 1940) Vol. 19 Page. 690.

2. Abde Rahim Subrati Vs. The Surat Cotton Spinning and Weaving Mills Co. Ltd Appn. No. 43/1944 Bombay Labour Gazette. (Nov. 1944) Vol. 24 Page 193.

Schedule I or III then he has to give a notice of change under section 42 (2) and follow the procedure laid down in this and the tenth chapter. If the employee desires a change in respect of industrial matters specified in Schedule III or in any order passed by his employer under the Standing Orders or in any industrial matter arising out of the application or interpretation of the Standing Orders, he shall first approach his employer with a request for the change and if no agreement has been arrived at in respect of the change, he shall make an application to the Labour Court and the decision of the Labour Court subject to the right of appeal to the Industrial Court will be final.

Sub-section 3.

This sub-section provides that if no settlement is arrived at in any conciliation proceedings relating which a notice has been given under this section. then a fresh notice with regard to the same change or a change similar in all material particulars can be given only after the expiry of two months from the completion of the conciliation proceedings and not before. On a fresh notice being given the proceedings under this chapter and chapter X shall again be gone into. But in cases where the settlement is arrived at, the parties would be bound by the settlement or registered agreement as the case may be and if a party wants to terminate the settlement or agreement, he must proceed under section 116.

Change:—

No notice of change under this section would be necessary if the change proposed is not in respect of an industrial matter. An industrial matter is defined in Section 3 (18).

Also the change which is contemplated by this chapter is one which would lead to an industrial dispute if not agreed to. Thus the grant in increase in wages is not a change of that nature because even if the change is not agreeable to employees it was not *incumbent* on them to accept it. It would not lead to an industrial dispute. Thus an employer can grant an increase in wages without giving a notice of change under this section and following the procedure prescribed in this Act.[1]

For further discussions see cases noted under the caption 'change' in comments under section 46.

Proper Notice.

If the notice of change is not given in accordance with the Act and the rules made thereunder, all subsequent proceedings would be illegal.[2]

The Court however held on the facts of the case that the proper notice was given.

---

1. Pundalik Mukund Vs. The Mill Owners' Association Bombay Appn. No. 4/1940 Bombay Labour Gazette (April 1940) Vol. 19. Page. 690.

For further discussion, see cases noted under chapter 'change' in comments under section 46.

2. Sakharam Jayaram Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Application No. 25/1944. Bombay Labour Gazette, (April 1945) Vol. 24 Page 492.

Notice of change under this section must be in the prescribed form. Where a letter was written by some of the workers but not in the form of a notice within the meaning of section 28 of the Bombay Industrial Disputes Act (corresponding to this section) it was not the statutory notice under this section and therefore a strike resorted to without giving such notice is illegal[1].

For form for the notice of change to be given by an employer and form for a notice of change to be given by an employee to the employer see forms.

Representative of The Employees.

If the employer desires a change the notice under section 42 (1) is to be given to the representative of the employees and when an employee desires a change under Section 42 (2) he has to give the notice through the the representative of the employees. Section 30 lays down who is entitled to act as representative of the employees.

Whenever the employer has to give an intimation to employees in general, the only person to whom he can give intimation is the Labour Officer, in absence of any one having a preferential right of acting as a representative of employees[2].

Notice of change when to be deemed general notice.

43. (1) Where an employer gives notice of a proposed change under sub-section (1) of section 42 affecting some of the employees in an industry in a local area, the representative of any employees engaged in the industry in the area may, within seven days from the date of service of such notice, intimate in writing to such employer that the employees mentioned in such intimation, are affected by such change.

(2) Where an employee gives notice of a proposed change under sub-section (2) of section 42 affecting one or some of the employers in an industry in a local area, any employer or an association of employers engaged in the industry in the local area may within seven days from the date of service of such notice, give a special notice in writing to the representative of employees entitled to represent such employee that other employers engaged in the industry in the area and mentioned in such special notice, are affected by such change. The employer or employers concerned shall affix a copy of such special notice at a conspicuous place on every premises where the employees concerned are employed for work.

(3) A copy of every intimation under sub-section (1) and special notice under sub-section (2) shall be sent to the Commissioner of Labour, the Chief Conciliator, the Conciliator for the industry con-

1. The Indian Manufacturing Co Ltd. Vs. The Govt. Labour Officer, Bombay and others. Application No. 26 1942. Bombay Labour Gazette. (Sept. 1942) Vol. 22 Page. 47

2. Mill Owners' Association Bombay Vs Baboo Shamji and others. Appn. No. 2/1940 Bombay Labour Gazette (March 1940) Vol. 19. Page 592.

cerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(4) On an intimation being given under sub-section (1) or a special notice being given under sub-section (2) and the provisions of sub-section (3) being complied with, the employees mentioned in the intimation or employers mentioned in the special notice, as the case may be, shall also, for the purpose of this Act, be deemed to be affected by such change, and to have been given notice under sub-section (1) or (2) as the case may be, of section 42

(5) Where an employer or an employee gives a notice of a proposed change under sub-section (1) or sub-section (2), as the case may be, of section 42, and such change, in the opinion of the Provincial Government affects the majority of employers or employees engaged in an industry or occupation in the local area, the Provincial Government may by notification in the *Official Gazette* declare that the whole of such industry or occupation, as the case may be, is affected by such change and thereupon it shall be deemed to be so affected.

Legislative Changes.

This section corresponds to section 29 of the Bombay Industrial Disputes Act. There has been a material change in sub-section (1). For the words, "any employers or an Association of employers engaged in such industry or occupation that the employees employed in such occupation by such employers and" in sub-sec (1) of S. 29 of that Act have been substituted the words, " such employer that such employees". The effect of this amendment is that the representative of the employers has to give the intimation to the employer giving notice of change.

In sub-clause (2) for the words "intimate" the words " give a special notice" have been substituted. There are also other minor changes in this sub-section. Sub-section (4) is essentially the same but the language is more explanatory. Sub-section (5) is a totally new addition.

Scope Of The Section.

It sometimes happens that an industrial matter in respect of which a notice of change is given by an employee or an employer is a matter of general importance and it becomes desirable that instead of there being piece-meal negotiations and settlements there should be a general and uniform settlement. As for example when a notice of change is given by some employees or employer for change in wage-rates or hours of work it may be desirable that this change in wage-rates or hours of work must be uniform in the industry in the local area. This section makes provision for making a notice of change given by some employer or employees to be made general. Sub-section (1) and (2) provide for a notice of change made general by employees and employers while sub-section (4) empowers the Provincial Government to make a notice of change given by some employer or employees to be made general.

Agreement regarding change.

44. (1) If within seven days from the date of service of a notice under section 42 or an intimation or special notice under section 43 or the date of publication of a notification under sub-section (5) of section 43, or within such further period as may be mutually fixed by the employers affected and the represenative of the employees affected an agreement is arrived at in regard to the proposed change, a memorandum of such agreement signed by the employer or employers as well as by the representative of employees shall be forwarded in the prescribed manner to the Chief Conciliator, the Registrar and the Labour Offcer:

Provided that where the employees deemed to be affected under sub-section (4) of section 43 are in the opinion of the Provincial Government the majority of the employees in the industry, or the whole industry is deemed to be affected under sub-section (5) thereof, the Labour Officer shall not enter into any agreement under this sub-section.

(2) On receipt of such memorandum of agreement the Registrar shall enter the same in a register maintained for the purpose unless on inquiry he is satisfied that the agreement was in contravention of any of the provisions of this Act or was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat,

(3) An appeal shall lie to the Industrial Court against an order of the Registrar refusing to register an agreement under sub-section (2). The provisions of section 20 shall apply to such appeal.

Legislative Changes:—

This section corresponds to section 30 of the Bombay Industrial Disputes Act, with some changes. Under this section, seven days' time has been fixed uniformly for arriving at an agreement. Under this section power has been given to extend this time by mutual agreement between the employers affected and the representative of the employees affected.

Proviso to sub-section (1) is new.

Under sub-section (2) the words "in contravention of any provisions of this Act" have been added.

Sub-section (3) is new.

Agreement To Be Limited To The Notice Of Change:—

The agreement must be limited to the notice of change just as an award made by an arbitrator must be limited to the terms of the reference.[1]

---

1. The Sekaria Cotton Mills Co. Ltd. Vs. The Govt. Labour Officer, Bombay. Application No.2/1945 Bom. Labour Gazette (July 1945) Vol. 24, Page 687.

Thus where notice of change was in respect of retrenchment in the colour winding department, and the agreement, included gray winding department also held the agreement was *ultra vires* and must be limited to the notice of change.[1]

Inquiry Under The Section:—

The Registrar has no jurisdiction to hold an inquiry under this section in absence of proper parties before him. Thus where the registrar refused to register an agreement between the mill company and certain elected representatives of the employees on the ground that the agreement was procured by misrepresentation but in the inquiry he held, three of the five elected representatives of the employees who had entered into the agreement had ceased to be in the service of the mills. The Industrial Court held that neither those three nor the remaining two were competent to act as representatives of the employees and therefore the inquiry held by the Registrar was vitiated by these defects in the proceedings.[2]

In Contravention of The Provisions:—

In the present sub-section (2) which corresponds to section 30 (2) of the Bombay Industrial Disputes Act, the words "was in contravention of any of the provisions of this Act," have been added. The effect of the amendment is that the Registrar can refuse to register an agreement if he is satisfied that the agreement is in contravention of any of the provisions of the Act. Under the Bombay Industrial Disputes Act it was held that the Registrar could not refuse to register an agreement even if it was in contravention of some of the provisions of the Act. For, under the old Act his power to refuse to register an agreement was confined to the matters enumerated therein viz. fraud, misrepresentation etc. and he could not refuse to register an agreement on the ground that it contravened the provisions of the Act.[3]

But under this Act, he can refuse to register on the ground that it contravenes the provisions of the Act.

Agreement to come into force.

45. An agreement registered under section 44 shall come into operation on the date specified therein or if no date is so specified on its being recorded by the Registrar.

Illegal change.

Illegal change

46. (1) No employer shall make any change in any standing order settled under Chapter VII without following the procedure prescribed therefor in this Act.

(2) No employer shall make any change in any industrial

1. (B. I. D.)

2. The Tata Mills Ltd. Vs. The Government Labour Officer, Bombay, and others. Appeal No 1/1946. Bombay Labour Gazette. (July 1946) Vol. 25, Page. 855.

3. In the matter of registration of an agreement dated 22-10-1943 between Marsden Spinning and Manufacturing Co. Ltd. and elected representatives of the employees. Labour Gazette. Vol. 24. Page 301.

matter mentioned in Schedule II—

(i) within the period provided for in sub-section (1) of section 44 unless an agreement is arrived at;

(ii) where no agreement is arrived at and registered, before a settlement relating to the dispute comes into operation;

(iii) where no settlement is arrived at, after two months from the date of the completion of the proceedings before the Conciliator;

(iv) in cases where there is a registered submission or in which the dispute has been referred to arbitration, before the date on which the award comes into operation.

(3) No employer shall make any such change in contravention of the terms of a settlement, award or registered agreement.

(4) Any change made in contravention of the provisions of sub-section (1), (2) or (3) shall be illegal.

(5) Failure to carry out the terms of any settlement, award or registered agreement shall be deemed to be an illegal change.

Legislative Changes:-

This section corresponds to section 73 of the Bombay Industrial Disputes Act. There have been substantial changes. Sub-section (1) of the section 73 has been divided into two sub-sections. The new sub-section (1) is substantially different. The corresponding words under the Bombay Industrial Disputes Act were, "no employer shall make a change in any industrial matter in regard to which Standing Order has been settled under section 26." The words used here are that, "no employer shall make a change in any Standing Order settled under Chapter VIII without following the procedure prescribed therefor under the Act." There is a vast difference between "change in an industrial matter in regard to which a Standing Order has been settled" and "change in the Standing Order."

In the new sub-section (2), the language is changed to clarify and make the meaning more precise. The only substantial change is the insertion of sub-clause (3) which makes it illegal to make a change after two months from the close of the conciliation proceedings. That provision is new.

Sub-section (5) is new.

The words "not being a change the effecting of which has for the purposes of the Factories Act become lawful by reason of a notification issued under section 8 thereof" which were inserted by Act No. XVI of 1941 in the sub-section (1) of section 73 of the Bombay Industrial Disputes Act have now been omitted.

Change:—

Change must be one which would, if not agreed to. lead to, an industrial dispute. This view necessarily postulates that the change contemplated must be one which the employers could compel the empleyees to accept. Thus where the opponent mills granted dearness allowance to its employees without giving a notice of change, it was contended that it was an illegal change as no notice under section 28 (corresponding to section 42) was given, held overruling the contention that though the grant of dearness allowance was a change within the meaning of the term under the Bombay Industrial Disputes Act, the change must be one which if not agreed to would lead to an industrial dispute and the grant of an increase in wages is not a change of that nature, because if the change is not agreeable to the employees, it was not incumbent on them to accept the increased wages and it is not a matter which would necessarily lead to an industrial dispute.[1]

It is not every change (even though falling under Sch. II) which requires a notice to be given under sction 28 (1) of the Bombay Industrial Disputes Act (corresponding to section 42 (1) of this Act). Only that change which is likely to affect adversely the conditions of workers requires the notice to be given[2].

Where the mills company granted bonus to its employees subject to the condition that those who were on the muster roll till the date of payment would be entitled to it, without giving a notice of change, it was contended that such grant without going through the procedure for making a change constituted an illegal change. Held overruling the contention that bonus being an exgratia payment, the grant of it subject to any condition whatsoever cannot be a circumstance affecting adversely the condition of employees as obtained before the grant and whatever the condition of the employees there was before grant of this bonus it was not worsened by the condition that the bonus was to be given only to those employees who had continued to be on the musters of the company till the dates of payment.[3]

It may be noted that the grant of this bonus was not under any agreement, settlement or award but by the free will of the mills.

The mills announced the grant of war-bonus equivalent to 1/6th of the total earning in the year 1944. The mills did not include in the earnings for the purpose of the calculation of the bonus a jawari allowance which had been afterwards turned into cash-allowance. The operatives contended that this allowance was a part of wages and should have been included in the calculation of wages for the purpose of bonus and the mills committed an

1. Pundlik Mukund and others Vs. The Mill Owners' Association Bombay and others Application No. 4/1940 Bombay Labour Gazette. Vol. 19. Page. 690.

Sakharam Jayaram Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Application No. 158/1943. Bombay Labour Gazette. (Jan. 1944.) Vol 23. Page, 322.

2. Sahader Gangaram Savant Vs. The New Pralhad Mills Ltd. Bombay. Application No. 87/1944 Bombay Labour Gazette,(June 1946) Vol. 25. Page. 760.

3. Ibid.

illegal change by excluding the said allowance in the calculation of the bonus. A preliminary objection was taken that the bonus was not paid in pursuance of any award, agreement or settlement and was a grauitous payment and therefore not a change within the meaning of that term under the Act, even if it be regarded as a part of wages. The preliminary objection was upheld and held that it was not an illegal change.[1]

Proof of illegal change.

Under the scheme of Bombay Industrial Disputes Act, an illegal change involves a criminal liability and therefore as in all criminal offences the allegations of illegal change must be proved by clear and definite evidence and without any reasonable doubt.[2]

The declaration of an illegal change is a penal provision and a party cannot be penalised on the allegation of a breach of a condition of a registered settlement, about which the parties do not seem to have been of one mind.[3]

Only employer can commit illegal change.

This section defines illegal change and section 107 provides punishment for an illegal change. It may be noted that this section makes only an employer guilty of illegal change and section 107 provides punishment to the employer committing an illegal change. That is quite natural because the employer being in control of the undertaking has power to make changes. It is in his power to dismiss an employee or refuse to pay the wages or reduce the wages in contravention of the provisions of the Act. While the employee by himself cannot make any change whatsoever. He cannot increase his wages or take his pay himself without the employer doing so. He can at the most refuse to work in order to enforce his demands. That would be a strike. If he goes on strike in contravention of the provisions of the Act he would be guilty of illegal strike and be punished therefor under section 104. But he cannot make any change in an industrial matter by himself. That is why the prohibition from making illegal changes is directed to the employer alone.

Sub-section 1 : change in standing order :

The sub-section (1) makes it illegal for an employer to make a change in any Standing Order without following the procedure prescribed therefor. Section 38 prescribes the procedure for alteration in the Standing Order. The words "change in Standing Order" have been interpreted in the case noted below.

Under the Standing Order No. 8 wages not paid on the usual pay-day became due for payment on the unclaimed wages pay-day fixed for every week,

1. Bachanna Mallapa Vs. The Sholapur Spinning and Weaving Mills. Co. Ltd. Applications No. 62/1945 to 66/1945. Bombay Labour Gazette (July. 1946) Vol. 25. Page. 849.
2. Shaikh Hussain Shaikh Ratan Vs. The Jalem Weaving mills. Kurla. Appn. No. 12/1942 Pombay Labour Gazette. (July 1942) Vol. 21 Page. 1124.
3. Bayobai Deepaji Vs. The Ambica Silk Mills Ltd. Appn No. 6/1941 Bombay Labour Gazette. (May 1941) Vol. 20 Page. 701.

and the management had fixed Thursday for the payment of unclaimed wages. The employees did not draw their wages on pay-days and on a Friday made demand for immediate payment of the wages. The management did not pay, as Friday was not the day on which unclaimed wages were to be paid under the Standing Order. The workers went on strike. In the application to declare the strike to be illegal it was contended that the demand for pay on Friday was a demand for a change in the Standing Order. The Court overruling the contention held that, "The question is whether the employees in this case desired a change in Standing Order.....It is contended that when the employees demand the payment of unclaimed wages on Friday, they demand a change in the Standing Order.

Under the Standing Order No. 8, they were entitled to the payment of unclaimed wages on a Thursday of a week. In our opinion this would not be a change or demand for change in any Standing Order because under the Standing Order the payment of unclaimed wages was to be made on a day to be notified by the Company and the workers did not demand from the management that the Standing Order as it stood should be changed. Their demand was that the unclaimed wages should be paid to them on the particular day on which they demanded it. According to them even though the management was bound to give unclaimed wages only on a Thursday they wanted their unclaimed wages in this particular case on a day other than fixed by them in their discretion. That being so the workers' demand would not amount to asking for a change in the Standing Orders as such". The Court however held that it was a demand for a change in an industrial matter.[1]

Contravention of standing orders.

Under the Bombay Industrial Disputes Act the words used were, "change in any industrial matter in regard to which a standing order under section 26 has been settled".

The effect thereof was that whereever an employee contravened the provisions of a Standing Order, it also constituted a change in an industrial matter within the meaning of the above terms in the section 73 and so, such an act was both the contravention of a Standing Order and an illegal change. Under that Act as well as under this Act different penalties have been provided for the contravention of a Standing Order and an illegal change. (See sections 106 and 107). The law is changed under this Act and the words abovenoted have been deleted and the sub-section (1) makes a change in any Standing Order without following the prescribed procedure to be an illegal change. It should be noted that there is a distinction between a change in Standing Order and contravention of the Standing Order.

Therefore the cases of contravention of the Standing Orders are not included in sub-section (1) of section 46. Thus mere contravention of a Standing Order would not be a change in Standing Order and would not be an illegal change under Section 46 (1). But some cases of contravention of the

1. The Mill Owners' Association Bombay Vs. The Govt Labour Officer. Bombay and others. Appn. 5/1940. Labour Gazette. (April 1940.) Vol 19. Page 693

Standing Orders would fall under sub-section (2) i. e. a change in an industrial matter specified in Schedule II, then such contravention would also be an illegal change. Thus an employee may be dismissed in contravention of the Standing Orders. The dismissal of an employee except in accordance with Standing Orders is specified in the item No. 3 of Schedule II. Therefore the dismissal of an employee in contravention of the Standing Orders, would fall under sub-sec. 2 and would be an illegal change as wall as contravention of the Standing Order. But if the breach of a Standing Ordar does not come under Schedule II it would not amount to an illegal change. But the employer would be guilty only of contravention of the Standing Order for which lesser penalty is provided for by section 107. When reading the decisions of the Industrial Court under the Bombay Industrial Disputes Act this change in law must be borne in mind. For under that Act all breaches of Standing Orders were illegal changes which is not so under this Act.

Settled under chapter VII:

The Court can interfere only if there is any illegal change with regard to Standing Orders settled under this Act. If no Standing Orders are settled under the Act or under the Bombay Industrial Disputes Act there would be no illegal change.[1]

It should be noted that by virtue of proviso (b) to section 122, the Standing Orders settled under the Bombay Industrial Disputes Act are deemed to be settled under the provisions of this Act and therefore a change in the Standing Orders settled under that Act without following the procedure prescribed for change in Standing Orders under this Act would be an illegal change. But mere putting a wrong number of the Standing Order in the notice of dismissal cannot be construed as an attempt on the part of an employer to make a change in standing orders.[2]

Sub-section 2 :

This sub-section fixes the outer and inner time-limits for making a change in any industrial matter specified in Schedule II. A change in such matter cannot be made before a registered agreement is arrived at or failing that, a registered settlement comes into operation. But if the conciliation proceedings fail, then the proposed change can be made by the employer but he must make the change within two months of the close of the conciliation proceedings provided that the matter has not been referred to arbitration. If the matter has been referred to arbitration no change can be effected till the date on which award comes into operation.

Sub-clauses (i), (ii) and (iv) provide the inner time-limit and sub-clause (iii) provide the outer time-limit for making a change.

The scheme of the Act is that after the conciliation proceedings are held and terminated there is nothing which precludes the employer from effecting a

1. Chandra Shekhar Shirtar Vs. The Indian Woollen Mills Ltd. Application No. 50/1940. Bombay Labour Gazette. (Dec. 1940) Vol. 20. Page 298.

2. Keshav Dharmayya Vs. The Manager. The Laxmi Cotton Manufacturing Co. Ltd. Appns. No. 15/1940 and 16/1940 Bombay Labour Gazette (Aug. 1940) Vol. 19. Page 1022.

change in respect of an industrial matter provided the subject matter of change is substantially in issue in the conciliation proceedings.[1]

Thus where the mills gave a notice of change for introduction of change over, whereby the day shift workers were to exchange places with the night shift workers, the conciliation proceedings proved fructuous and ended on 23rd July, 1942. Held that after the failure of the conciliation proceedings the mills were entitled to enforce the change and the day workers were entitled to go on strike if they intended to. The change enforced after the end of conciliation proceedings was legal, but the change made before that date was held to be illegal.[2]

The applicants contended that in the notice of change given by the mills it was stated that they wanted to reduce the complement of 25 table folders to 14 to be selected by seniority and after the failure of conciliation proceedings the applicants who were senior were retrenched and those who were junior to them were retained and therefore the mills committed an illegal change as this was not covered by the notice of change. Held that what was stated in the notice of change was a 'desired change' and did not amount to a binding agreement and therefore there was no illegal change[3].

SCHEDULE II.

The sub-section (2) enacts that any change in an industrial matter specified in Schedule II would be an illegal change. Schedule II contains 10 items and cases under them have been discussed below.

SCHEDULE II : ITEM (1) :

Reduction intended to be of a permanent or semi-permanent character in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift not due to 'force majeure:'

Legislative changes:

The words, "in any occupation or process or department or departments or in a shift" have been added in this Act. They did not appear under the Bombay Industrial Disputes Act. So it was held under that Act that if some of the employees have been transferred from day duty to night duty, it would not be a permanent or semi-permanent reduction in the number of persons employed provided that the strength of the employees remains the same.[4]

So also where workers were offered work in Ring Frame Department on the closure of the Mule Department it was held it was not an illegal

1 Pundlik Mukund Vs. The Mill Owners' Association Bombay, Application No. 4/1940. Bombay Labour Gazette. (April 1940) Vol. 19. Page 690.

2. Abde Rahum Subrati Vs. The Surat Cotton Spinning and weaving Mills. Co Ltd. Application No. 43/1944, Bombay Labour Gazette. (Nov. 1944) Vol. 24. Page 193.

3. Sitaram Vasudeo Salvi Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Application No. 26 1944 Bombay Labour Gazette. (March 1946). Vol. 25. Page 516.

4. The Textile Labour Association Ahmedabad. Vs. The Shri Ambica Mills Co Ltd. Appn. No. 18/1940. Bom. Labour Gazette. (Oct. 1940.) Vol. 20. Page 142.

change.[1]

The addition of the words "shift" and "department" in this section changes the law in this respect and under this act if there is a reduction of a permanent or semi-permanent character in a shift or in a department or process it would fall under this item even if the total strength of the employees remains unchanged.

SECT. 46.

Temporary reduction:-

Reduction must be of a permanent or semi-permanent character. A reduction of a temporary character does not come within the provision of this item.[2] Where the Mills Company, after dismissing one weft carrier, did not fill up the place because they wanted to make an experiment of reducing the number from four to three, held the reduction was of a temporary character and did not come under item (1) of Schedule. II.[3]

Where the number of permanent operatives in the Winding Department was 22 in May, all of whom were permanent, 21 in June, 20 in July and 17 in Aug., held that it was a reduction coming under item (i) of Schedule II. No such reduction could be made without going through the formalities of the Act and therefore the reduction having been made without such formalities amounted an to illegal change.[4]

Where a third shift which was run intermittently for two years was closed, no permanent employee having been discharged or reduced, the discharged employees being all temporary, held that the closure did not involve any reduction of permanent or semi-permanent character in the number of permanent employees and so no notice of closure was necessary under section 28 (1) of the Bombay Industrial Disputes Act, and failure to give such notice did not amount to an illegal change.[5]

Where a mill engaged a new contractor for folding department work and where the incoming contractor engaged his new men (almost the same number) in place of the men of the outgoing contractor, held that as the old men were not given any permanent tickets by the mill, they were not permanent within the meaning of Standing Order No. 3, and as such were not entitled to any notice under Standing Order No. 19 nor was there any

1. Dhondiram Vs. The Sholapur Spinning and Weaving Co. Ltd. Appn. No. 135/1945. Bombay Govt. Gazette Part. 1. (6th March. 1947) Page 811.

2. The Textile Labour Association Ahmedabad. Vs. Shree Ambica Mills Co. Ltd. Application No. 18/1940. Bombay Labour Gazette. (Oct. 1940) Vol. 20. Page 142.

Kalimohan Bhomik Vs. The Jam Hosiery Works. Appn. No. 153/1943. Bombay Labour Gazette. (Aug. 1944). Vol. 23. Page 753.

3. Narayan Yashvant Donde Vs. The Coorla Spinning and Weaving Co. Ltd. Appn. No. 17/1941. Bom. Labour Gazette (July 1941). Vol. 23. Page 936.

4. The Government Labour Officer Vs. The Manager. Ramlal Silk Mills. Appn. No. 52/1940. Bombay Labour Gazette. (Dec. 1940). Vol. 20. Page 299.

5. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Manufacturing and Calico Printing Co. Ltd. Appn. No. 163/1943. and 164/1943. Bombay Labour Gazette. (Oct. 1944) Vol. 24. Pages 96 and 103.

reduction of a permanent or semi-permanent character in the number of employees, that no notice of change under section 28 of the Act (corresponding to section 42 of this Act) read with item (1), Schedule II of the Bombay Industrial Disputes Act was necessary and that there was no illegal change.[1]

Force Majeure.

The meaning of the word "Force Majeure" has been very ably and exhaustively expounded in application No. 153 of 1943. It may be taken as a leading case on the subject. The facts of that case were that owing to the shortage of necessary kinds of yarns and particular kinds of needles that were required, the management were compelled to effect temporary reduction in the number of the employees. The Court held that, "Owing to circumstances arising on account of war which were beyond their control they were compelled to effect temporary reduction in the number of employees. This reduction must be held to be due to *Force Majeure*." Dealing with the subject at length the court further said in the judgment:—

"The word 'Force Majeure' has not been defined in the Bombay Industrial Disputes' Act and must be given its ordinary Dictionary meaning which is 'irresistible compulsion'." What is meant by 'Force Majeure' can be gathered from the provisions made in the Standing Orders for temporary stoppage of work such as is made in Standing Order No. 16 for the cotton textile mills in Bombay. In a case arising out of the Standing Order No. 16 in Application No. 16 of 1944. Mr. Justice Divatia held that the shortage of colour chemicals due to war conditions and Government control was sufficient justification for temporary stoppage of work. If the word '*Force Majeure*' is interpreted in that sense, it would appear that the shortage of yarns and needles owing to conditions created by the war was also due to *Force Majeure*. The meaning of this expression which is often used in English commercial contracts was construed by Mr. Justice Mc Cardie, in the case of Lebeaupin Versus, Richard Crispin and Company, 2. King's Bench Division (1920), page 714. The learned judge observes as follows:—

"This term is used with reference to all the circumstances independent of the will of men, and which it is not in his power to control; and such Force Majeure is sufficient to justify the non-execution of the contract. Thus war, inundations, and epidemics are cases of Force Majeure; it has even been decided that a strike of workmen constitutes a case of Force Majeure. This is a wide definition but I think that it usefully, though loosely, suggests, not only the meaning of the phrase as used on the continent, but also the meaning of the phrase as often employed in the English contracts. That war comes within the meaning of 'Force Majeure' would seem to be of the opinion of Swiften Eady L. J. in Zinc Corporation V. Hirsch (1916) I. K. B. 541, 554. That a strike of workmen comes within the phrase was the opinion of Bailhache J.

1. The Textile Labour Association, Ahmedabad. Vs. The Ahmedabad Cotton Manufacturing Co. Ltd Application No. 7/1942. Bombay Labour Gazette. (Sept. 1943) Vol 23, Page 48. The Textile Labour Association Vs. The Manekial Harilal Mills. Co. Ltd. Application No. 37/1942 Bombay Labour Gazette. (Sept. 1943). Vol. 23. Page. 52.

in Matsoukis V. Priestman, (1915) I. K. B. 681. That learned Judge was, if I may respectfully say so, clearly right when he said that the phrase 'Force Majeure' was not inter-changeable with 'Vis Major' or 'the act of God.' It goes beyond the latterphrases. Any direct legislative or administrative interference would, of course, come within the term ; for example, an embargo. But even such a thing as a breakdown of machinery through accident was deemed by Bailhache J. to come within the words 'Force Majeure' (see Matsoukis Vs. Priestman), (1915) I. K. B. 681, 687." These observations support the view which I am taking *Viz.* that the words 'Force Majeure' do not necessarily refer to an act of God but all circumstances which are beyond the control of the party which claims the protection of 'Force Majeure' clause. In this view therefore, the reduction in the number of employees must be held to be due to 'Force Majeure'. A reduction of this character does not, therefore, require a notice of change and it is not necessary to go through the procedure laid down in Bombay Industrial Disputes Act for effecting changes. It is, therefore, not an illegal change.[1]

Item (i) of Schedule II of the Bombay Industrial Relations Act refers to the reduction intended to be of a permanent or semi-permanent character not due to ' Force Majeure '. Any temporary reduction in the number of employees due to Force Majeure is intended to be dealt with by Standing Orders framed under item (vii) of Schedule I of the Act. If therefore the action of mills is intended to be a reduction of a permanent character and is not due to Force Majeure, a notice of change is necessary. If on the other hand the reduction was not intended to be of a permanent character or was due to Force Majeure no notice of change is in fact required.[2]

Thus where certain employees were reduced on account of the shortage of needles and yarns due to war conditions, but were some time after taken back, held it was a reduction due to force majeure and was of a temporary character and therefore no notice of change under section 28 (2) of the Bombay Industrial Disputes Act was necessary.[3]

Similarly where workers were temporarily reduced due to shortage of chemicals which the Government ceased to supply, but the workers were taken back seven days afterwards held it was a temporary reduction due to causes beyond the control of the employer and therefore came under Standing Order No. 16 and not under item (i) of the Schedule II.[4]

Similarly where looms on which the applicants were working were requisitioned by the Government for the purpose of preparing machine gun belting, the employers being given 10. p. c. over the cost of production, wages and other expenses being paid by Government, were stopped due to the sudden decision of the Government to stop production and the employees

1. Kali Mohan Bhomik V. The Shree Jam Hosiery Works, Borivli. Appl. No. 153 of 1943. Bombay Labour Gazette (August 1944) Vol. 23, Page. 753.
2. Ibid.
3. Ibid.
4. The Dhulia Girni Kamgar Union Vs. The New Pratap Weaving and Manufacturing Co. Ltd. Appn. No. 16/1944 Bombay Labour Gazette. (July. 1944) Vol. 23. P. 708.

were taken back after some days, held the reduction was temporary and beyond the control of the management and the action of the mills fell under Standing Order No. 16 and not under item (I) of Schedule II.[1]

But when the management dispensed with the services of certain employees by giving 14 days' notice because of the sudden stoppage of the Government orders and no body else was appointed in their place, it was held that the reduction was not due to force majeure and was not of a temporary character. For a discharge by 14 days' notice of a permanent worker would not necessarily mean that the employer means to dispense with the services only for a short time and therefore the reduction in number of employees having been caused without giving a proper notice of change was an illegal change.[2]

Competence to apply:

The person who has been discharged or dismissed cannot make an application for declaration of an illegal change on the ground of reduction, because the application is to be made by an employee concerned under section 55 of the Bombay Industrial Dissptes Act (by an employee directly affected under section 79 of the present Act.) So such a person cannot be regarded as an 'employee concerned' because after his valid discharge from the mill he ceases to be an employee of the mill within the meaning of the definition of the term and has no *locus standi* to make an application.[3]

SCHEDULE II : ITEM II :

Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments.

Legislative Changes :

The words, "demands for" which occurred in the Bombay Industrial Disputes Act at the beginning have been dropped. The words "occupation or process" have been added.

Temporary increase:—

This item relates to a demand for permanent or semi-permanent increase in the number of persons employed or to be employed in any department or departments. The increase ought to be permanent or semi-permanent. Mere temporary increase does not come under this item. Thus where the management asked two persons to mind two looms which formerly were worked by one person because skilled persons were not available and as a temporary measure while filling up the vacancies, held that there was no permanent or

1. Mahomed Yusuf Ahmed Vs. The Bombay Textile Mills. Co. Ltd. Application No. 2/1944. Bombay Labour Gazette. (July 1944) Vol. 23. Page 705.

2. Ekanath Mahadeo. Vs. The Bombay Textile Mills. Ltd. Appn. No. 1/1944. Bombay Labour Gazette. (July 1944) Vol. 23. Page 703.

3. Ganpat Rambhan Gayekwar Vs. The New Prelhad Mills Ltd. Appn. No. 16/1941. Bombay Labour Gazette. (July 1941.) Vol. 20 Page. 935.

Sakharam Raoji Vs. The Khandesh Spinning and Weaving Mills. Co. Ltd. Appn. No. 28/1941. Bombay Labour Gazette (July 1941) Vol. 20. Page. 940.

semi-permanent increase in the number of persons employed and there was no illegal change.[1]

ITEM 3:

Dismissal of any employee except as provided in the standing orders applicaple under this Act:

Legislative changes:-

This item under the Bombay Industrial Disputes Act was in these terms : 'Dismissal of any employee except in accordance with law or as provided in the standing orders framed under section 26 of this Act.' The words "in accordance with law" have been dropped. Also at the end words "applicable under this Act" have been substituted for the obvious reason that the standing orders under the Bombay Industrial Disputes Act are applicable under this Act by virtue of proviso (b) to section 122 of this Act.

Except as provided in the standing orders:-

Standing order No. 19 as framed for operatives provides for discharge of an employee. Standing order No. 21 enumerates the causes for which an operative may be dismissed and standing order No. 22 lays down the procedure for dismissing an employee. If an operative is dismissed except as provided for in the Standing Order, the act of dismissal comes under this item and would amount to an illegal change.

The dismissal of an employee without following the procedure laid down in standing order No. 22 constitutes change.[2]

The standing order No. 22 provides that an operative cannot be dismissed unless he is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances against him. So where the applicant was dismissed without being informed in writing of her alleged misconduct nor given an opportunity to explain her conduct held the action of the mills was otherwise than in accordance with the standing order and amounted to an illegal change.[3]

For full discussion see the comments under standing order No. 22

So also if an operative is dismissed for an alleged misconduct not falling under standing order No. 21 settled for operatives, the dismissal is not in accordance with the standing orders and therefore would constitute an illegal change.

For full discussion see comments under standing order No. 21

Standing order No. 19 for operatives prescribes the procedure for discharge of an employee. If an employee has been alleged to be discharged but the termination of his services does not amount to a legal discharge

---

1. The Amalner Girni Kamgar Union Vs. The Pratap Spinning and Weaving Manufacturing Co. Ltd. Appn. No. 49/1940. Bombay Labour Gazette. (Dec, 1940) Vol. 20. Page 297.

2. Government Labour Officer, Bombay. Vs. Ambika Silk Mills Co. Ltd. Bombay Appn. No 60/1940. Bombay Labour Gazette. (Feb. 1941.) Vol. 20. Page. 427.

3. The Govt. Labour Officer. Bombay. Vs. The Manager, Ambika Silk Mills. Ltd. Appn. No. 60/1940 Bom. Labour Gazette (Feb. 1941) Vol. 20. Page, 427.

under standing order No. 19, it amounts to an illegal dismissal and therefore it constitutes an illegal change provided of course that procedure for dismissal under standing order No. 22 is also not followed.[1]

SCHEDULE II : ITEM (4) :

Rationalisation or other efficiency systems of Work:-

Under the Bombay Industrial Disputes Act the words were "Introduction of Rationalisation or other efficiency systems of work." The words "Introduction of" have been deleted in this Act.

Meaning of "Rationalisation"-

This word has not been defined in the Act. Every body connected with an industry speaks now-a-days of rationalisation but this expression is used in such a variety of meanings that the discussion about it tends to result in confusion. The Industrial Court has also found it difficult to find its exact connotation. The etymological meaning of rationalisation means any measure or method which is based on reason i. e. to say any reasoned process as opposed to a merely empirical traditional or haphazard process. The definitions of rationalisation have been attempted in various industrial countries. The Textile Labour Inquiry Committee appointed by the Bombay Government in its report (Vol. 2. Page 180) has discussed the different definitions of this word. The Committee explained the meaning of the word thus, "Rationalisation has a wider as well as narrower meaning. In its wider sense it means a reform in the various concerns in an industry taken together for the purpose of reducing waste and loss by concerted action. In its narrower sense it means a reform in a particular industrial unit for substituting uneconomic and inefficient practices by substituting and scientific methods. In one aspect of the latter case, rationalisation means improvement in labour productivity and efficiency and all reforms of this type are grouped together and have been called 'efficiency system' in Bombay. It has been contended that such efficiency schemes are different from rationalisation. We do not think that according to the latest comprehensive definition given by the International Labour Office efficiency scheme can be taken out of this sphere of rationalisation" (Vol. II page 183.)

Rationalisation:—

There are three decisions on this point under the Bombay Industrial Disputes Act and all of them have been delivered by Mr. Rajadhyaksh J. Member of the Industrial Court. He held that the exact meaning to be attached to the word rationalisation in item (4) of Schedule II is a matter of some doubt. Though by reducing a few hands and keeping the same number of machines working, a large amount of work may be taken from the remaining hands but item no. (4) Schedule II refers to the introduction of the system of rationalisation and not to sporadic occasional and temporary and comperatively insignificant changes effected in the strength of the employees engaged

2. Noormahomed Allabax Vs. Sarangpur Cotton Manufacturing Co. Ltd. No. 2. Appn. No. 55/1943. Bombay Labour Gazette. (Sept. 1943) Vol. 23. Page. 39.

in a particular department according to the needs of the department.[1]

Six workers were discharged for a number of days varying between 10 to 30, on account of 'working doubles'. By the system of working doubles is meant a system by which the work which was done by two is directed to be done by one and as result of which one worker is necessarily discharged. The question was whether this action constituted rationalisation or an introduction of an efficiency system of working. Out of 88 machines it was only on six machines and only for a few days, that one worker was asked to attend to two sides thereof. The introduction of a system necessarily connotes certain stability or general applicability. The discharge of a worker by directing one worker to attend to two sides of the machine in respect of a few machines and for a very short period would not amount to introduction of rationalisation whatever may be the motive of the management in taking the step. Held the action of the mills was not an introduction for rationalisation.[2]

In the same case the court held that. "If the management wants to try out an experiment for a few days before adopting a system as such, it would not amount to introduction of rationalisation.". But where the mills introduced a system of working doubles on 20 machines out of 30, in January 1941 and continued till 17th May 1941 when the necessity of working doubles disappeared owing to the discontinuance of night-shift, the court over-ruled the contention that it was a temporary or experimental measure. The Court observed, "I was afraid that these two dicisions of mine might perhaps leave a loop-hole by which a system of rationalisation may be introduced in the guise of a temporary or experimental measure. My fears in that regard have unfortunately proved to be true as the present application shows. By no stretch of imagination can the action of the mills be characterised as experimental or lacking in stability or general applicability. Out of 26 machines on which system of doubles could be worked 20 machines were brought under the new arrangement. The arrangement did not continue for a few days or weeks but for four months and it was discontinued only because the night-shift had to be stopped owing to riots and as a result the workers in the night-shift were brought back again to their original jobs.....The action of the mills amount to the introduction of system of rationalisation. As this was brought without going through the procees of conciliation it amounted to an illegal change."[3]

The working of a relay system means rationalisation of work for two hours where half the number of employees attend to the working of the whole department.[4]

1. The Textile Labour Association Ahmedabad. Vs. The Shri Ambika Mills. Co. Ltd. Appn. No. 18/1940 Bombay Labour Gazette (Oct. 1940) Vol. 20. Page. 142.

2. Chaman Balchand Vs. The Manek Chowk and Ahmedabad Manufacturing Co. Ltd. Appn. No. 57/1940 Bombay Labour Gazette (Feb. 1941.) Vol. 20. Page, 429.

3. The Textile Labour Association, Ahmedabad Vs. Kaiser-I-Hind Mills. Co. Ltd. Appn. No. 27/1941. Bombay Labour Gazette. (Sept. 1941) Vol. 21. Page 41.

4. The Sarangpur Cotton Manufacturing Co. Ltd. Vs. The Government Labour Officer Ahmedabad. Appn. 25/1942 Bombay Labour Gazette (Aug. 1942) Vol 21 Page 1189.

SCHEDULE II : ITEM 5 :

Starting alteration or Discontinuance of shift-working otherwise than in accordance with the standing orders—

Schedule I of the Act which relates to the subject matter of the standing orders includes shift-working and Schedule II includes among other things the starting alteration or discontinuance of shift-working otherwise than in accordance with the standing orders. The latter provision necessarily implies that there must be standing orders in force at the time of starting or discontinuance of shifts. When no standing orders are in force there cannot be discontinuance of shifts, 'otherwise than in accordance with the standing orders'. This item in Schedule II is the counterpart of the item of shift-working in Schedule I, so that shift-working in accordance with the standing orders falls under Schedule I while starting alteration or discontinuance of shift-working otherwise than in accordance with the standing orders falls under Schedule II. Therefore in absence of any standing orders in operation at the material time, the discontinuance of night-shift working cannot fall under item No. 5 of Schedule II and would not therefore be an illegal change.[1]

Standing order No. 9 as settled for Bombay group of mills and Ahmedabad group regulates the shift-working. But the difference between standing order No. 7 as settled for Bombay group and as settled for Ahmedabad group is that mills in Bombay group are given power to transfer an operative from the day-shift to the night-shift but no such power was given under the standing orders settled for Ahmedabad and if an operative in the day-shift is unwilling to work in the night-shift, he cannot be compelled to do so and such a transfer would amount to an illegal change in Ahmedabad.[2]

So where operatives were transferred in Ahmedabad from day-shift to night-shift on pain of being dismissed from service, the change was otherwise than in accordance with the standing orders and constituted an illegal change.[3]

The opponent mills in Surat-where change-over of shifts is not permitted under the standing order-introduced on 1-9-41 a system of change-over by which day-shift workers were asked to exchange places with the night-shift workers. The day-shift workers objected to it and the mills gave a notice of change on 27th May 1942. The conciliation proceedings failed and ended on 23-7-42. The mills continued the system of change-over. Held the mills were entitled to continue the change after completion of the conciliation, but the action of the mills in instituting the system of change-over before that date was contrary to the provisions of Bombay Industrial Disputes

1. City Deputy Collector and Labour Officer A'bad, Vs. The New Manekchowk Spinning Weaving and Co. Ltd. Appns. 1/40. 6/40. and 7/40. Bom. Govt. Gazette. Part. IV. C. Dt. 8-2-40. Page 156.

2. Chaman Balchand and others. Vs. Manekchowk and A'bad Manufacturing Co. Ltd. Appn. No. 57/1940. Bombay Labour Gazette. (Feb. 1941). Vol. 20. Page 429.

3. The Textile Labour Association Ahmedabad. Vs. Ahmedabad Kaiser-i-Hind Mills. Co. Ltd. Appn. No. 27/1941 Bombay Labour Gazette. (Sept. 1941). Vol. 21. Page 41.

Act and amounted to an illegal change.[1]

But there is a recent award of the Industrial Court to the effect that for a period of one year from 15th February 1947 the mills in Ahmedabad shall be allowed to work three shifts if they want to; and in both cases of two shifts as well as three shifts, there is to be a system of change over at the end of each month by which the workers of the first shift will go over to the second shift and those of the second to the third and those of the third shift to the first in rotation.[2]

Transfer to a different khata:–

It is not open to a worker to refuse to work in a different khata unless the change involves an alteration in his status or decrease in his wages.[3] Nor is there a privilege of a worker to claim to work on a particular machine. Therefore the mills do not commit an illegal change or violate any standing order by asking a worker to work or not on a particular machine and as long as wages remain the same, there is no illegal change.[4] Under this Act the transfer of workers in the establishment and assignment of work fall under item (2) of Schedule II and any aggrieved worker may apply to the Labour Court under sections 42 (4) and 78 (1) (a) (III).

SCHEDULE II : ITEM 6 :

Withdrawal of recognition to unions of employees :

The words 'or granting' which occurred in the Bombay Industrial Disputes Act have been deleted in this Act.

SCHEDULE II : ITEM 7 :

Withdrawal of any customary concession or privilege or change in usage :

Custom and usage saved:–

'Although there is no section in the Bombay Industrial Disputes Act which expressly saves existing usages and customs in an industry, it does appear that the legislature intended to save such existing usages and customs. For instance item No. 7 of Schedule II refers to a change in usage which can only be effected by going through a process of conciliation. By implication therefore it must be taken that all usages whether in favour of employers or employees are saved. Acting therefore in consonance with such usage is making a change in the industrial matter.[5]

"Playing off" of the employees for the trade reasons although not embodied

1. Abderahim Subrati Vs. The Surat Cotton Spinning and Weaving Mills Co. Ltd. Application No. 43/1944 Bombay Labour Gazette. (Nov.1944). Vol. 24 Page 194.

2. In the matter of an Industrial Dispute regarding change over of shifts between Mill owners' Ass. and The Textile Labour Association A'dad. Submission No. 9/1946. Bombay Govt. Gazette. Part. I (27th Feb. 1947). Page 757.

3. Syed Fidaally Kasamally Vs. The National Mills Co. Ltd. Appn. No. 43/1943. Bombay Labour Gazette. (Dec. 1943) Vol. 23. Page 268.

4. Bai Kamla Jivi Vs. The Shree Anand Cotton Mills Ltd. Appn. No. 77/1945 Bombay Labour Gazette (July 1946), Vol. 25 Page 844.

5. Sakharam Laxman and others Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Appn. No. 50/1941. Bombay Labour Gazette. (Sept. 1941) Vol. 21. Page 56.

in standing orders No. 16, 17, and 18 was proved to have been continued as a custom or usage in Bombay for the last 25 years but after 1929 in a precise and well defined way, and almost regarded as a part of the contract of employment ; and where the mills acted in consonance with the usage in playing off certain operatives, held there was no change at all: much less illegal change.[1]

There was a custom in Ahmedabad textile mills to grant a holiday on Ramzan Id and there was an agreement between the Textile Labour Association and the Mill Owners' Association to include Ramzan Id as a full holiday in the list of holidays. The management of the opponent mills did not grant holiday on the Ramzan Id day; held it was contrary to usage and custom and therefore amounted to an illegal change. The mills contended that none of the workers at that time working in the mills were muslims: therefore it was not necessary to observe a holiday on Id day. Held that it was immaterial. The importance of a holiday to an employee consists not always in the opportunity it provides in performing religious rites but in compulsory rest he gets by reason of the holiday. It was further contended that the workers by being present on that day had waived their right to observe it as a holiday : held that the willingness or unwillingness of the workers had no bearing. It may be that even though the workers considered themselves to be entitled to a holiday they had to attend the mills being afraid if they did not do so they might lose their wages for that day.[2]

According to the custom and usage in the mills where ever there was any shortage of work in the mills no operative was played off but whatever work was available was distributed among all the permanent workers. From 10th June 1943 however the management introduced the Pali system by which whenever there was any shortage of work a certain number of permanent workers were employed and others were played off. Held that introduction of Pali system contrary to the usage and custom of the departmert without following the procedure for effecting changes amounted to an illegal change.[3]

Where the relay system had been in vogue from 1935 onwards in the weaving department of the mills, it was held to be a custom or usage within the meaning of this item and notice of change is necessary if a change in the system is desired.[4]

According to custom and usage in the textile industry at Ahmedabad a person working doubles in the ring spinning department was entitled to 45 per cent. increase in wages, but certain employees working double were not paid the full 45 per cent. increment, held that it was change in custom and usage on the part of the employers referred to in item no. 7, Schedule II and as this change was effected without going through the process of conciliation it

2. Ibid.

1. The Textile Labour Association Ahmedabad. Vs. The National Mills. Co Ltd. Appn. No. 63/1940 Bombay Labour Gazette. (April. 1941) Vol. 20. Page 633.

1. The Jalgaon Girni Kamgar Union Vs. The Khandesh Spinning and Weaving Mills. Co. Ltd. Application No. 84/1944 Bom. Labour Gazette. (June. 1945). Vol. 24. Page 629.

2. The Sarangpur Cotton Manufacturing Co. Ltd. No. 2 Vs. The Government Labour Officer, Ahmedabad. Appn. No. 28/1942 Bombay Labour Gazette. (August 1942), Vol. 21. Page. 1189.

constituted an illegal change.[1]

Where the employees wanted more cleaning time for their machines, held they wanted a change in custom or usage and the change they desired fell under item No. 7 of Schedule II.[2]

Occasionally asking the workers to work beyond the normal hours of work but within the limits of the Factories Act because of an extra holiday in the course of the week is not contrary to the custom and usage in the Textile Industry at Ahmedabad. The Court also made it clear that if work for extra hours is taken for every holiday that is given even within the limits prescribed for the factories, it may have to be considered in future whether such an action would not be contrary to the custom and usage.[3]

Customary concession or privilege:-

It may be customary for the management to get a loom repaired if it goes out of order but where such loom is not repaired it cannot be said that it was 'withdrawal of any customary concession or privilege.'[4]

If the loom gets out of order it is the business of the jobber on duty to see that it is repaired and there is no question of customary concession or usage.

Privilege:-

'Privilege' means something which cannot be demanded as of right and it is therefore not a duty on the part of the other party but a concession which is made without any legal obligation. Distribution of food stuffs at cheap rates from a mill is a privilege enjoyed by the operatives of the particular mill which opens the grain shop[5].

ITEM NO 8.

Introduction of new rules of discipline or alteration of existing rules and their interpretation (except in so far as they are provided for in the standing orders applicable under this Act:

The Words "except in so far as they are provided for in the standing orders applicable under this Act" is an addition in this Act. They did not occur in the Bombay Industrial Disputes Act.

1. The Textile Labour Association. Vs. The Ahmedabad Kaiser-I-Hind Mills. Co. Ltd. Appn. No. 27/1941 Bombay Labour Gazette (Sept. 1941). Vol. 21. Page 41.

2. The Standard Mills. Co. Ltd. Vs. The Government Labour Officer Bombay and others. Appn. No. 25/1941. Bombay Labour Gazette. (May. 1941). Vol. 20. Page 705.

3. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appns. No. 4/1941 and 8/1941 Bombay Labour Gazette. (April 1941). Vol. 20, Page 629.

4. Khalil Muddi Vs. The Laxmi Silk Mills. Ltd. Appn. No. 54/1940. Bombay Labour Gazette. (Feb. 1941) Vol. 20. Page 426.

5. The Standard Mills. Co. Ltd. Vs. The Government Labour Officer, Bombay and others. Appn. No. 7/1943. Bombay Labour Gazette. (April 1943) Vol. 22. Page 528.

SCHEDULE II: ITEM 9 :

Wages including the period and mode of payment:-

The words in item 9 of the Schedule II of the Bombay Industrial Disputes Act were 'wages and total weekly hours of work'. That item has now been split up. Item (9) refers to "wages including the period and mode of payment" while the item (10) refers to "hours of work and rest intervals."

Wages:-

Wages have been defined in section 3 (39) of this Act. The word was not defined under the Bombay Industrial Disputes Act.

The scheme of the Bombay Industrial Disputes Act (of this Act as well) is that there shall be no change affecting the wages of the workers without going through the conciliation proceedings.[1]

So non-payment of wages is an illegal change.[2]

Reduction of Wages:-

When in fact the rate of the wages of piece workers had been lowered, the fact that even under reduced rates of wages a worker in fact gets more by reason of his turning out more work is immaterial and if the reduction in the rate of wages is effected without giving a notice of change it amounts to an illegal change.[3]

Reduction of earnings on account of stoppage of the relay service falls under item (9) of Schedule II of the Bombay Industrial Disputes Act and therefore stoppage of relay system without a notice of change would be illegal.[4]

Under this Act even the stoppage of the relay system without any reduction in earning would fall under item (10) of Schedule II being a change in hours of work and rest intervals. The notice of change therefore would be necessary. But where there was reduction in the earnings of an employee on account of the neglect of the management to repair a machine held it was not a case of change with regard to wages.[5]

Change made in wage-rate:-

A change made in the wage-rate before the Bombay Industrial Disputes Act came into force, although the reduced wages were actually paid after the Act came into operation, does not come under item (9) of Schedule II of the Act and as such would not amount to an illegal change.[6]

1. The Textile Labour Association Ahmedabad. Vs. The Shri Ambika Mills. Co. Ltd. No. 2. Appn. No. 8/1940 Bombay Labour Gazette. (Oct. 1940). Vol. 20. P. 139.

2. Hiralal Asharam Vs. The Hathising manufacturing Co. Ltd. Appns. No. 8/1943 and 28/1943. Bombay Labour Gazette. (Dec. 1943.) Vol. 23, Page. 263.

3. The Textile Labour Association Ahmedabad. Vs. Shree Ambica Mills. Co. Ltd. No. 2. Appn. No. 8/1940. Bombay Labour Gazette. (Oct. 1940). Vol. 20. Page 139.

4. City Deputy Collector and Labour Officer. Vs. National Mills. Co. Ltd. Appn. No. 4/1939. Bombay Labour Gazette. Part IV. C. Dated 8th February 1940. Page 160.

5. Khalil Muddi Vs. The Laxmi Silk Mills. Appn. No. 54/1940. Bombay Labour Gazette. (Feb. 1941). Vol. 20. Page 426.

6. City Deputy Collector and Labour Officer, Ahmedabad Vs. Ahmedabad Laxmi Cotton Mills. Ltd. Ahmedabad Appn. 2/39 Bombay Government Gazette. Part. IV. C. Dated 8th February 1940. Page 159.

Demand of unclaimed wages:-

Where the demand of the operatives was that the unclaimed wages should be paid to them on a particular day instead of on the day fixed by the management according to standing order No. 8; it was held that the workers' demand would not constitute a request for a change in the standing order as such; it would none the less amount to asking for a change in an industrial matter because it relates to the payment of wages. That being so a notice under section 28 (2) of the Bombay Industrial Disputes Act was necessary.[1]

Dearness allowance: Bouns: Other allowances:

Dearness allowance and bonus are expressly included in the definition of wages given in section 3 (39) of this Act. Even under the Bombay Industrial Disputes Act in which the term 'wages' was not defined, dearness allowance was held to be included in wages.[2]

It was held that bonus though an exgratia payment was included in the word 'reward' and was an industrial matter.[3]

But now by virtue of the definition of wages both bonus and dearness allowance are 'wages.' So any change in respect thereof would be a change in respect of 'wages,' a matter specified in item No. (9) Schedule II. But it must be remembered that change contemplated by the Act is a change which would lead to an industrial dispute if not agreed to. Thus a grant of dearness allowance by an employer of his own free will is though a change in wages is not a change within the meaning of this Act. For it is always open to the employee not to accept it if he is minded and therefore the grant of dearness allowance would not lead to an industrial dispute and so no notice of change would be necessary for the grant of dearness allowance or increase in wages.[4]

So also where the management grants without there being any agreement, settlement or award and of its own free will bonus subject to a condition that those on the muster-roll on a particular date were entitled to it, held that the bonus being an exgratia payment, the grant of it subject to any condition is not a circumstance affecting adversly the condition of employees as it obtained before the grant and therefore such a condition does not require any notice to be given and is not an illegal change.[5]

Also grant of exgratia payment to some trusted workers not regulated by

1. The Mill Owners' Association Bombay Vs. The Government Labour Officer, Bombay and others. Appn. No. 5/1940. Bombay Labour Gazette. (April. 1940.) Vol. 19. Page 693.

2. The Textile Labour Association Ahmedabad. Vs. The Shree Nagar Weaving and Manufacturing Co. Ltd. Appn. No. 10/1941 and 32/1941 Bombay Labour Gazette. (Sept 1941) Vol. 21, Page 35.

The Government Labour Officer, Ahmedabad Vs. The Anant Mills. Co. Ltd. Appn. No. 33/1941. Bom. Labour Gazette. (Oct. 1941) Vol. 21. Page 153.

3. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association. Reference No. 1/1945. Bombay Labour Gazette. (Oct. 1945) Vol. 25. Page 117.

4. Pundlic Mukund and others Vs. The Mill Owners' Association Bombay. Appn. No. 4/1940. Bombay Labour Gazette. (April. 1940.) Vol. 19. Page 690.

5. Sahdeo Gangaram Savant Vs. The New Pralhad Mills Ltd. Appn. No. 87/1944. Bombay Labour Gazette. (June. 1946) Vol. 25. Page 760.

any rules and depending merely upon the volition of employers who may or may not pay it for a particular month would not be a 'change' within the meaning of the Act.[1]

Where the applicant contended that the mills committed an illegal change by not giving him Sukhadi and extra bonus, the court held that the staff of the mills was not entitled to these things as of right and it depended entirely on the sweet will of the management. The member of the staff who had not the good will of the management could not get them and therefore there was no illegal change in not paying the same to him.[2]

The ratio decidendi of these cases is that when the employer grants dearness allowance, bonus or any other allowance exgratia, of his own sweet will, without there being any agreement, settlement or award in respect of the grant thereof, then the payment or nonpayment thereof is not 'change' within the meaning of the term in the Act. But if such grant is in pursuance of an agreement, settlement or award then the employer is bound by the terms thereof and cannot make a change therein in contravention of the terms of such agreement etc. Thus non-payment of dearness allowance in contravention of terms of an award is an illegal change.[3]

Wages earned:-

According to an agreement between the employer and Representative Union bonus was to be calculated on "wages earned". The applicants' case was that a special war time allowance which was paid under another agreement to them at the rate of Rs. 2/-per hapta of 12 days for working the relay system must be included in computing the bonus. The workers contended that in the relay system each weaver had to mind four looms instead of usual two looms for two hours and therefore this was intensified work and must be deemed wages earned and therefore the mills committed an illegal change in not including this allowance in computing bonus. The Court held that, "The relay system does not necessarily imply intensified work but it is a case of divided work. Each weaver is normally supposed to put in his best and when he is called upon to mind four looms his best cannot be improved upon. This best which used to be given to two looms is divided between four looms. Therefore this must be deemed to be an extra emolument and not 'wages earned.' Therefore it must be excluded from consideration at the time of

1. Sakharam Jayaram Vs. The Khatau Makanji Spinning and Weaving Mills. Co. Ltd. Appn. No. 158/1943. Bombay Labour Gazette. (June. 1944) Vos. 24. Page 322.

2. Dharmsi Hathising Vs. The Ahmedabad Laxmi Cotton Mills. Co. Ltd. Appn. No. 162/1943. Bom. L. G. (Oct 1944) Vol. 24 Page 123.

3. The Textile Labour Association, Ahmedabad Vs. The Shree Nagar Weaving and Manufacturing Co. Ltd. No. 10/1941 and 32/1941 Bombay Labour Gazette. (Sept. 1944) Vol. 21 Page 35.

The Government Labour Officer, Ahmedabad. V. The Anant Mills. Co. Ltd. Appns. No. 33/1941 and 42/1941 Bombay Labour Gazette. (Oct. 1941) Vol. 21. Page 153.

The Textile Labour Association Ahmedabad. Vs. The Ahmedabad Mill Owners' Association. Submission No. 1/1945. Bom. L. G. (Oct. 1945.) Vol. 25. Page 107.

calculating bonus"[1]

It is respectfully submitted that this decision seems to be incorrect for when a man minds four looms instead of two there is intensified work and he is put to more labour and strain. The decision however may be supported in the special terms of the agreement regarding bonus.

SCHEDULE II : ITEM 10 :

Hours of work and rest-intervals :

Under the latter part of item (9) of Schedule II of the Bombay Industrial Disputes Act the words were, "total weekly hours of work" and therefore it was held under that Act that there was nothing which precluded the management from fixing the daily hours of work on any particular day in such a way that the total weekly hours were the same of course subject to the provisions of the Factory Act.[2]

Under this Act the law is changed and the words are, "hours of work and rest-intervals." So it is not possible for the management to change the daily hours of work or even to change the rest-intervals without giving notice of change under Section 42.

Sub-section 3 :- Such change :-

The words used here are 'such change'. The words must refer to a change described in sub-section (1) of Section 73 of the Bombay Industrial Disputes Act (corresponding to sub-section (1) and (2) of section 46 of this Act.)[3]

So the change in contravention of the terms of an award etc. would amount to an illegal change only if it is a change referred to in sub-section (1) and (2) i. e. it must be a change in standing orders or with respect to an industrial matter sepcified in Schedule II. So where dearness allowance was not paid in contravention of the terms of an award, it was held that the dearness allowance is included in wages, and is an industrial matter specified in item (9) of Schedule II and non-payment thereof is therefore 'such change' within the meaning of this sub-section and therefore amounts to an illegal change.[4]

In contravention of registered settlement:-

Non-payment of dearness allowance on due date in contravention of a registered settlement constitutes an illegal change.[5]

Where there was a registered settlement regarding the periodical change-over of shifts, but certain night-shift workers were not transferred to day-shift owing to the defective eye sights of their opposite numbers in the day-shift;

1. Masumbhai Gulamrasul Vs. The Monogram Mills Co. Ltd. Appn. No. 31/1944. Bombay Labour Gazette. (May. 1945) Vol. 24. Page 553.

2. The Ahmedabad Cotton Manufacturing Co, Ltd. Vs. The Textile Labour Association. Ahmedabad. Appn. No. 4/1940 and 8/1940. Bombay Labour Gazette. (April. 1941) Vol. 20. Page 629.

3. The Textile Labour Association Ahmedabad. Vs. The Shrinagar Weaving and Manufacturing Co. Ltd. Appn. No. 10/1941 and 32/1941. Bombay Labour Gazette. (Sept. 1941). Vol. 21 Page 35.

4. Ibid.

5. Josephine Martine and antoher Vs. Ramlal Silk Mills Appn. No. 1/1943. Bombay Labour Gazette. (May. 1943) Vol. 22. Page 599.

held that it was a breach of the settlement as the settlement did not mention anything about operatives with defective eye sights being entitled to continue in day-shift and therefore the act of the mills constituted an illegal change.[1]

So also where it was provided in the registered settlement to re-employ certain doffers when their machines restarted it was held to be an illegal change not to re-employ them when the machines re-started. "It is no defence to say that their employment is not necessary because the machines are started on fine instead of course count"[2]

There was a registered settlement that the posts of bobbin carriers and coolies in the weaving department shall not be reduced but the mills company reduced one bobbin carrier. In an application to declare it to be an illegal change it was contended by the management that the person reduced belonged to weft department and his name was entered into the muster roll for weft department and therefore there was no breach of the settlement, held that in view of the admission of the mills in their written statement that weft room belonged to weaving department held that the reduced worker belonged to the weaving department and therefore his reduction was in contravention of the terms of the registered settlement and constituted an illegal change.[3]

Where there was a registered settlement that the management will introduce such change as regards humidification etc. as may be possible and feasible but in spite of reasonable attempts of the company humidification plant was not obtained, but the mills made other changes to give effect to the terms of the settlement, held there was no illegal change.[4]

Implicit Terms:—

Where the settlement provided that the wages should be increased in such a way that the average earning of a weaver for 26 working days would amount to Rs. 37/- on the basis of 68 per. cent efficiency, the operatives contended that the mills committed contravention of the terms of this settlement in as much as they failed to supply good and adequate materials and to maintain the looms in the working order so that it was impossible for the workers to reach 68 per cent. efficiency. The mills contended that this contention did not arise out of the settlement and therefore there was no contravention of the terms of the settlement. The Court refused to accede to the contention of the mills and held that it was an implicit term of the settlement that other things should remain constant, and it would be illegal change if the workers could show that the conditions have worsened after the

1. Suleman Abdulla and others. Vs. The Indian Manufacturing Co. Ltd. Appn. No. 19/1942. Bombay Labour Gazette. (Sept. 1942) Vol. 22. Page 45.

2. The Textile Labour Association Ahmedabad. Vs. The Shri Ambica Mills. Ltd. Appn. No. 1/1940. Bombay Labour Gazette. (March. 1940) Vol. 19. Page 590.

3. Narayan Yashvant Donde Vs. The Coorla Spinning and Weaving Co. Ltd. Appn. No. 55/1941. Bombay Labour Gazette. (Jan. 1942) Vol. 21. Page 515.

4. The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving and Manufacturing Mills. Co. Ltd. Appn. No. 41/1944. Bombay Labour Gazette, (Jan. 1944) Vol. 23. Page 310.

date of settlement.[1]

Vague Settlements:—

No breach can be held proved of a settlement the terms of which cannot be definitely ascertained. The declaration of an illegal change is a penal provision under the Act and the opponent cannot be penalised on the allegation of a condition about which the parties do not seem to have been of one mind. Where the employer agreed by a registered settlement to restore the dearness allowance when the present stocks in excess of normal stocks were exhausted, held the words 'normal' stocks is too vague and indefinite to be made foundation of an application for an illegal change.[2]

Where the settlement provided that management will have due regard to seniority, efficiency and regulating of attendance in making promotions, held the management was the proper judge in deciding efficiency in absence of any test of efficiency laid down in the settlement and therefore if the management makes any promotion, it will not amount to an illegal change.[3]

The vague agreements of this type would provoke disputes rather than prevent them and it would be most difficult for the court to decide which of the two operatives is more efficient".[4]

Modification of a Settlement or a Registered Agreement:—

If there is a settlement the parties can by mutual agreement or settlement modify it. In order to bring about this modification the parties may come to a private agreement or one party may proceed by giving a notice of change. These latter proceedings may result in an agreement before the conciliation starts or in a settlement after the conciliation begins and the previous settlement would be deemed to be modified by the latter settlement. If no settlement is reached and the conciliation proceedings fail, then the original settlement will subsist, and no change in contravention thereof can be made. The only course for a party is to terminate the settlement under section 116 (1). Thus there was a settlement between the employer and the employees that 15 out of them would work double sides, the management wanted to increase the number to 25. On the failure of the conciliation proceeding for that change the management effected the change and increased the number of double siders to 25. Held that on the failure of the conciliation proceedings to increase the number of double siders to 25, the original settlement must be deemed to be subsisting and the increase in number of double siders being in contravention of that settlement amounted to an illegal change.[5]

---

1. Vithoba Shivram Vs. The *Digvijaya* Spinning and Weaving Co Ltd. Appn. No. 218/1943, Bombay Labour Gazette. (Nov. 1944) Vol. 24. Page 182.
2. Bayobai Deepaji Vs. The Ambica Silk Mills. Co. Ltd. Appn. No. 6/1941. Bombay Labour Gazette. (May. 1941) Vol, 20. Page 701.
3. The Amalner Girni Kamgar Union Vs. *The Pratap Spinning and Weaving and Manufacturing Co. Ltd. Appl. No. 60/1941. Bom.* Labour Gazette. *Vol. 21. P. 718.*
4. Ibid.
5. The Jalgaon Girni Kamdar Union. Vs. The Khandesh Spinning and Weaving Co. Ltd. Appn. No. 81/1944. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 852.

Where there was a settlement about wages, the mills wanted an increase in hours of work. The operatives refused to take part in the proceedings unless the wages were increased. The conciliator said he could not go into the question of wages unless the settlement relating to wages was first terminated and reported failure of the conciliation proceedings. The mills thereupon increased the number of hours; held it was no illegal change and the conciliator was right.[1]

In Contravention of the Terms of an Award.

Non-payment of dearness allowance in contravention of the terms of an award is an illegal change.[2]

The failure to pay the dearness allowance within the time mentioned in the award would also be a contravention of the term of the award and would amount to an illegal change.[3]

When the award is silent as to the time when the dearness allowance should be paid it must be paid within a reasonable time after it becomes due. The reasonable time cannot be defined with precision but period of one month would not be unreasonable. Non-payment within such time is an illegal change.[4]

Even if it is with-held under a mis-apprehension and subsequently paid it would be a breach of the terms of the award and would amount to a technical illegal change.[5]

Non-payment of dearness allowance in due time is an illegal change.[6]

Non-payment of the dearness allowance under an award would amount to an illegal change even if there is a special agreement with the emloyee that he will not demand it. For in the case of an award no change could be introduced by an employer even with the consent of the employee by virtue of section 77 (2) of the Bombay Industrial Disputes Act (corresponding to section 116 of this Act.)[7]

1. Narayan Krishna Shetty Vs. The Jam Manufacturing Co. Ltd. Mill No. 1. Appn. No. 6/1945. Bombay Labour Gazette (August 1946) Vol. 25. Page 934.

2. The Textile Labour Association Ahmedabad Vs. The Shrinagar Weaving and Manufacturing Co. Ltd. Appn. No. 8/1941 and 32/1941. Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 35.

3. Shripat Lahanu Vs. Khandesh Spinning and Weaving Mills. Co. Ltd. Appn. No. 22/1942. Bombay Labour Gazette. (Aug. 1943) Vol. 21. Page 1186.

Josephine Martin Vs. Ramlal Silk Mills. Appn. No. 1/1943. Bom. L. G. (May, 1943) Vol. 22. Page. 599.

4. The Textile Labour Association Ahmedabad. Vs. Maneklal Harilal Sping. and Manufacturing Co. Ltd. Appn. No. 12/1941. Bombay Labour Gazette. (April. 1941) Vol. 20. Page 636.

5. The Amalner Girni Kamgar Union Vs. The Pratap Spinning and Weaving and Manufacturing Co. Ltd. Appn. No. 5/1942. Bom. Labour Gazette. (July. 1942) Vol. 21. Page 1115.

6. Mohan Vasaram Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appn. No. 91/1944. Bombay Labour Gazette. (June. 1945) Vol. 24. Page 615.

7. The Government Labour Officer, Ahmebadad. Vs. The Anant Mills. Co. Ltd. Appn. No. 33/1941. (Oct. 1941) Vol. 20. Page 153.

Hirachand Velsi Vs. The Gujarat Ginning and Manufacturing Co. Ltd. Appn. No. 39/1944. Bombay Labour Gazette. (Jan. 1946) Vol. 25. Page 343.

Nor can the rights under the award be waived by an employee. Therefore if the employer does not pay the dearness allowance payable under an award, he none the less, commits an illegal change even if the right to dearness allowance is waived by the employee.[1]

But if there is no binding award failure to carry out its terms would not amount to an illegal change.[2]

In contravention of registered agreement:-

Where there was a registered agreement that the management should not work certain old ring frames except in case of a break down of a machine and the management worked the ring frames without there being a break down held it was a breach of the agreement and amounted to an illegal change.[3]

Where the mills company was bound to pay bonus by virtue of a registered agreement but did not pay it, held that the non-payment thereof amounted to an illegal change. In view of the agreement, it was the duty of the mills to pay as it became due.[4]

Sub-section 5 :-

This sub-section is new and its terms are very wide, in fact much wider than those used in sub-section 3. The use of the word 'any' shows that agreement. settlement or award may be with regard to any industrial matter and need not be limited to the matter specified in Schedule II and failure to carry out the terms of any settlement etc. would be an illegal change. Under sub-section (3) the change in contravention of the terms of a registered agreement etc. which is prohibited is a change in respect of an industrial matter specified in Schedule II. Under that sub-section a change in industrial matters not specified in Schedule II even though in contravention of the terms of a registered agreement etc. is not illegal change. Under this sub-section failure to carry out the terms of any settlement, agreement or award is an illegal change.

Employer to make change etc. within certain time.

47. An employer required under the terms of any decision or order of a Labour Court or the Industrial Court to carry out a change or withdraw an illegal

1. The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving and Manufacturing Co. Ltd. Appn. No. 5/1942. Bombay Labour Gazette. (July. 1942) Vol. 21. Page 1118.

2. The Textile Labour Association Ahmedabad. Vs. The Shri Ambika Mills Co. Ltd. Appn. No. 17/1940. Bombay Labour Gazette. (Nov. 1940) Vol. 20. Page 201.

3. Mannusing Motising Vs. The Khandesh Spinning and Weaving Mills. Co. Ltd. Appn. No. 37/1941. Bombay Labour Gazette. (Aug. 1941) Vol. 20. Page 1019.

4. Hirachand Velsi Vs. The Gujarat Ginning and Manufacturing Co. Ltd. Appn. No. 39/1945. Bombay Labour Gazette. (Jan. 1946) Vol. 25. Page 341.

Hirachand Asharam Vs. The Hathising Manufacturing Co. Ltd. Appn. No. 8/1943 and 23/1943 Bombay Labour Gazette. (Dec. 1943) Vol. 23. Page. 263.

Babu Nathu Vs. The Silver Cotton Mills Co. Ltd. Appn. No. 108/1943. Bombay Labour Gazette. (Oct. 1944) Vol. 24. Page 117.

Karsansing Tikaram and others Vs. The Rajnangar Spinning and Weaving and Manufacturing Co. Ltd. Appn. No. 27/1943 Bombay Labour Gazette. (Sept. 1943) Vol. 23 Page 50.

change, shall comply with such requirement within such time as the Court giving or making the decision or order prescribed and where no time is prescribed by it, within forty-eight hours of the giving or making of the decision or order.

COMMENTS.

This sub-section is totally new. Under Section 78 (1) (c) the Labour Court and under Section 84 (1) (a) the Industrial Court in appeal are empowered to require any employer to withdraw an illegal change or to carry out any change which is a matter in issue. This section prescribes the time limit within which the employer must carry out the change. Failure to carry out the required change would be punishable under section 106. If the Labour Court does not prescribe the time within which the change should be carried out it must be done within 48 hours and if the employer fails to carry out such change within 48 hours, he would be guilty under section 106.

Under the Bombay Industrial Disputes Act, the Industrial Court had no power similar to those given under section 78 (1) (A) (c) to require the employer to carry out or withdraw any change. All that the Industrial Court could do was to declare a change illegal for which the employer would be liable to be punished for illegal change, or continuance of the same.

CHAPTER IX.

Joint Committees.

"Provision is made for setting up Joint Committees of representatives of employers and employees in various occupations and undertakings in an industry. This is a device for establishing direct and continuous touch between the representatives of employers and workers and for securing speedy consideration and disposal of the difficulties which arise from day to day in employer employee relations. This is a familiar arrangement in United Kingdom and in several other countries and its adoption has been recommended by Royal Commission on Indian Labour." (Statement of Objects and Reasons).

This Chapter and the provisions thereunder are totally new.

Constitution of Joint Committees.

48 (1) A Joint Committee may be constituted for an undertaking or occupation with the consent of the employer and the registered union for the industry for the local area.

Provided that no Joint Committee shall be so constituted in respect of an undertaking or occupation where there is no representative union, unless not less than fifteen per cent. of the employees are members of a registered union.

(2) On application made in this behalf by the employer or the Union to the Registrar, a Joint Committee shall be entered in a list of Joint Committees maintained by him, and thereupon all the provisions of this Act shall apply to the Joint Committee.

(3) A Joint Committee shall stand dissolved—

(a) whenever the condition specified in the proviso to sub-clause (1) ceases to be complied with;

(b) on expiry of the period of a three months' notice in that behalf being given by the employer to the union, or by the union to the employer.

COMMENTS.

A Joint Committee may be set up for an undertaking as a whole or an occupation thereof in cases where (1) there is a Representative Union or (2) in the absence of a Representative Union in those undertakings and occupations which have at least 15 per cent. of the employees as members of the Registered Union which would be either a Qualified or a Primary Union.

Such a Joint Committee can be set up only with the consent of the employer and the registered union and may be dissolved by three months' notice. This shows that the Joint Committee is a voluntary machinery.

Composition of Joint Committee.

49. (1) A Joint Committee shall consist of such number of members as may be prescribed; half the number shall in the prescribed manner be nominated by the union and the other half appointed by the employer concerned.

(2) A chairman shall be appointed in accordance with rules made in this behalf. He shall perform his duties in the prescribed manner.

For the manner of nomination of members by the union under sub-section (1), the appointment of the chairman and the manner in which he shall perform his duties under sub-section (2) of section 49, see rules.

Proceedings of Joint Committee.

50. (1) A representative of the registered union may attend any meeting of the Joint Committee, to advise the members representing the employees.

(2) The proceedings of the Joint Committee shall be conducted in the manner prescribed.

(3) The proceedings shall be recorded in a minute book.

Note that the decision of the Joint Committee does not bind the employer or the union. The employer or the union may endorse or reject the decision. For the manner of conducting proceedings of a Joint Committee see rules.

Proposal for change

51. (1) Any member of a Joint Committee may move proposal regarding any change other than a change in any standing order or regarding any other matter affecting the relations between the employer and the employees in the undertaking or occupation, as the case may be, for which the Committee is constituted;

Provided that no such proposal shall be moved for a change in respect of any industrial matter if such change could not for the time being be made under this Act.

(2) The decision of the Joint Committee regarding every change proposed under the provisions of sub-section (1) together with all necessary particulars regarding such change shall within forty-eight hours be communicated to the registered union and the employer, as well as the Labour Officer and the Commissioner of Labour.

Special intimation for change and special application to Labour Court

52. (1) Where an agreement is arrived at between the employer and the union regarding any change proposed in the Joint Committee under sub-section (1) of section 51, a memorandum of such agreement signed by them shall be forwarded by the employer in the prescribed manner to the Registrar and the Labour Officer and all the provisions of this Act shall apply to such agreement as they would apply in respect of an agreement under sub-section (1) of section 44.

(2) If within seven days from the receipt of a decision under sub-section (2) of Section 51, the employer or the union sends an intimation (herein-after called special intimation) in the prescribed form to the Conciliator for the industry for the local area stating that the change proposed in the Joint Committee, being a change in respect of a matter not specified in Schedule I or III, or such change with specified alterations, should be made, and that no agreement in respect thereof has been arrived at between the union and the employer, the Conciliator shall forthwith enter the case as an industrial dispute in the register kept under section 55, and the provisions of this Act shall apply to it as if a statement were submitted under section 54.

(3) If within seven days from the receipt of a decision under sub-section (2) of section 51 regarding a matter specified in clause (a) of paragraph A of sub-section (1) of section 78 the employer or union sends a special application in respect of such matter to the Labour Court having jurisdiction, the Labour Court shall forthwith proceed to decide the dispute under the provisions of Chapter XII.

(4) A copy of every special intimation sent under sub-section (2) shall be forwarded to the Chief Conciliator, the Conciliator for the industry for the local area concerned, the Registrar, the Labour Officer and such other person as may be prescribed.

COMMENTS.

The effect of section 52 is that notice of change under section 42 would be dispensed with in respect of a change moved in the Joint Committee. If the employer and the union reach an agreement the memorandum of agreement shall be registered and such an agreement shall be as good as an agreement reached after a notice of change. Where the parties do not reach an agreement and the change is one in respect of a matter not specified in Schedule I or III, either the employer or the union may send within seven days of the receipt of the decision of the Joint Committee, a special intimation to the Conciliator that such change or such change with a specified alteration should be made. The Conciliator shall thereupon proceed with the conciliation

proceedings under Chapter X. If the change is as regards a matter specified in clause (a) of the paragraph (A) of section 78 (1) the employer or the union may make a special application to the Labour Court.

For the manner in which the memorandum of agreement shall be forwarded under sub-section (1), the form in which a special intimation shall be forwarded under sub-section (2) and other persons prescribed in subsection 4 see rules.

Decision of respective representatives binding on union and employer.

53. (1) The union may authorise such proportion, (hereinafter called the authorised proportion), not being less than three-fourth of the members representing the employees on the Joint Committee, to accept or reject on its behalf any proposal or class of proposals moved in the Committee.

(2) The employer may authorise a proportion of the members representing him on the Committee to accept or reject on his behalf any proposal or class of proposals moved in the Committee.

(3) For a period of two months after a decision of the Committee, no notice of change under section 42, or special intimation or application under section 52 shall be given or made–

(a) where the union acts under sub-section (1), by the employees concerned or the union, contrary to the decision of the authorised proportion accepting a proposal in respect of which it is authorised; and

(b) where the employer acts under sub-section (2), by the employer, contrary to the decision of the authorised proportion of his representatives.

(4) The union whenever it acts under sub-section (1) and the employer whenever he acts under sub-section (2), shall communicate the fact to the Chief Conciliator, the Conciliator for the industry for the local area concerned and the Registrar.

COMMENTS.

The sub-section (1) and (2) of this section provide for an authorised proportion of the members representing the employer or employees on the Committee to accept on his or their behalf any proposal or class of proposals moved in the Committee by either of them.

If the employer or the employees concerned or the union acts contrary to the decision of his or its authorised proportion accepting a proposal in respect of which it is authorised, then such party is debarred for a period of 2 months from giving any notice of change as provided by section 42 or special intimation or application under section 51 which they are entitled to give under the Act. This indirectly supplies the sanction for inducing the

parties to act in accordance with the decision of its authorised proportion and makes it binding in this sense.

But such a decision of the authorised proportion is not binding in the same way as registered agreement would be binding. For such a decision is not a full fledged agreement and would mature into an agreement only when the parties to the memorandum sign the agreement and get it registered with the Registrar under section 51.

CHAPTER. X.

Conciliation proceedings.

Under the scheme of the Act conciliation proceedings are compulsory in the sense that an employee or employer who has given notice of a change under section 42 (1) or section 42 (2) respectively, must, if he desires the change, initiate and go through the conciliation proceedings as laid down under this chapter. Of course none of the parties are bound to agree and come to a settlement. They may not arrive at a settlement. What the Act requires is that after the parties have failed to come to an agreement inter se a responsible Government official-the conciliator-should endeavour to bring about the settlement of the dispute and only after he has failed and conciliation proceedings have ended that the parties should be at liberty to take any course they please.[1] i. e. the employer may effect the change[2] or may declare a lock-out to enforce the change or the employees may commence a strike to resist the change which the employer tries to effect or to enforce the change they want. Any change made[3] or lock-out declared[4] or strike commenced[5] before it, would be illegal and punishable under the Act.

Report of dispute to be sent to Registrar, Chief Conciliator and Conciliator.

54. (1) If any proposed change in respect of which notice is given under section 42, or an intimation or special notice is given under section 43 is objected to by the employer or the employee, as the case may be, the party who gave such notice, intimation or special notice shall, if he still desires that the change should be effected, forward to the Registrar, the Chief Conciliator and the Conciliator for the local area for the industry concerned a full statement of the case in the prescribed form within fifteen days from the date of service of such notice, intimation or special notice on the other party or within one week of the expiry of the period fixed by both the parties under sub-section (1) of section 44 for arriving at an agreement.

Explanation.—For the purposes of this sub-section a change shall be deemed to be objected to by the employer or employee, as the case may be, if within seven days from the date of service of such notice, intimation or special notice or within the period fixed by both the parties under sub-section (1) of section 44 for arriving

1. Pandurang Hari Vs. The New City of Bombay Manufacturing Co. Ltd. Appn. No. 81 1945. Bomay Labour Gazette (April. 1946) Vol. 25. Page 601.
2. Pundlik Mukund Vs. The Mill Owners' Association Bombay, Appn. No. 4/1940. Bombay Labour Gazette. (April. 1940) Vol. 19. Page 690.
3. Section 46. (2).
4. Section 98. (2).
5. Section 97. 1. (c).

at an agreement a memorandum of agreement has not been forwarded to the Ragistrar under the said sub-section.

(2) Where a notification is issued under sub-section (5) of section 43 in respect of such change, any employer or employee in the industry may within seven days from the date of publication of such notification forward such statement to the said officers.

Legislative changes :-

The notable change is that the period in which the statement must be forwarded has been reduced from 21 days to 15 days. In the explanation the period is reduced from 15 days in the Bombay Industrial Disputes Act to 7 days. Sub-section (2) is new. It is a consequential addition necessitated by the addition of sub-section (5) of section 43. For the form of the statement see forms.

Commencement of conciliation proceeding.

55. On receipt of the statement of the case under section 54 the Conciliator shall, except in a case in which by reason of the provisions of section 64 a conciliation proceeding cannot be commenced, forthwith enter the industrial dispute in the register kept for the purpose and thereupon the conciliation proceeding shall be deemed to have commenced from the date of such receipt.

Legislative Changes :-

This section corresponds to section 35 of the Bombay Industrial Disputes Act. The words "except in a case in which by reason of the provisions of section 64 a conciliation proceeding cannot be commenced" are new.

Conciliation proceeding

56. (1) The Conciliator shall hold the conciliation proceeding in the prescribed manner.

(2) It shall be the duty of the Conciliator to endeavour to bring about the settlement of the industrial dispute and for this purpose the Conciliator shall enquire into the dispute and all matters affecting the merits thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute and may adjourn the conciliation proceeding for any period sufficient in his opinion to allow the parties to arrive at a settlement or for any other reason.

COMMENTS.

This section corresponds to section 36 of the Bombay Industrial Disputes Act. Rules prescribe the manner in which proceedings are to be held. Note that all that the Conciliator can do is to endeavour to bring about a settlement. He has no power to force the parties to agree.

Power of Chief Conciliator to intervene.

57. (1) It shall be lawful for the Chief Conciliator to intervene or to direct any Conciliator to intervene at any stage in any conciliation proceeding held by another Conciliator, and thereafter the Chief Conciliator or the Conciliator so directed shall hold the conciliation proceeding with or without the assistance of the Conciliator.

(2) The Chief Conciliator may from time to time issue such directions as he deems fit to any Conciliator at any stage of a conciliation proceeding.

Legislative changes:-

Section 57 corresponds to section 37 of the Bombay Industrial Disputes Act. Sub-section 2 is new.

Settlement and report.

58. (1) If a settlement of an industrial dispute is arrived at in a conciliation proceeding, a memorandum of such settlement shall be drawn up in the prescribed from by the Conciliator and signed by the employer and the representative of employees. The Conciliator shall send a report of the proceeding along with a copy of the memorandum of settlement to the Registrar and the Chief Conciliator. The Registrar shall record such settlement in the register of agreements and shall then publish it in the prescribed manner. The change, if any, agreed to by such settlement shall come into operation from the date agreed upon in such settlement and where no such date is agreed upon from the date on which it is recorded in the register.

(2) If no such settlement is arrived at, the Conciliator shall, as soon as possible after the close of the proceeding before him, send a full report to the Chief Conciliator stating the steps taken by him for ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, a settlement could not be arrived at :

Provided that where such Conciliator is the Chief Conciliator such report shall be forwarded by him to the Provincial Government.

(3) The Chief Conciliator shall forward the report submitted to him under sub-section (2) to the Provincial Government with such remarks as he deems fit.

(4) The Provincial Government shall publish the report of the Conciliator or Chief Conciliator forwarded to it under the proviso to

sub-section (2) or under Sub-section (3) except in cases in which the dispute is referred to a Board, or the parties to the dispute enter into a submission in respect of it.

(5) Before the close of the proceeding before him the Conciliator shall ascertain from the parties whether they are willing to submit the dispute to arbitration.

(6) (a) Notwithstanding anything contained in the foregoing sub-sections, if at any stage of a conciliation proceeding the parties agree in writing to submit the dispute to arbitration, the agreement shall be deemed to be a submission within the meaning of section 66.

(b) Where the agreement provides for arbitration either by a Labour Court or by the Industrial Court, the Conciliator shall forthwith refer the dispute to the Labour Court or the Industrial Court, as the case may be.

COMMENTS.

This section corresponds to section 38 of the Bombay Industrial Disputes Act and lays down what should be done when a settlement is arrived at and when a settlement is not arrived at.

Sub-sections (5) and (6) (a) and (b) of this section are new. Sub-section (5) imposes on the Conciliator the duty to ask the parties if they are willing to refer the dispute to arbitration. Sub-section (6) lays down that if the parties agree to refer the dispute to arbitration, the agreement is to be considered a submission within the meaning of section 66. Sub-section 6 (b) makes it obligatory on the Conciliator to refer the dispute to the Labour Court or the Industrial Court in case where the agreement provides for arbitration by tha Labour Court or the Industrial Court.

The memorandum of settlement must be in the form prescribed. Such a memorandum is to be published in the official Gazette.

For termination of a settlement see section 116.

Reference to Board.

59. (1) The Provincial Government may at any time, and where either prior to the commencement of a proceeding before the Conciliator or after his failure to bring about a settlement, the parties agree, shall refer the dispute to a Board and thereupon conciliation proceedings before the Board shall be deemed to have commenced from the date of such reference.

(2) On such reference being made, the board shall give notice in the prescribed manner to the parties to the dispute to appear before it at such time and place as may be specified in the notice. A copy of such notice shall be sent to the Labour Officer.

(3) On the date specified in the notice or on such other date as may be fixed by the Board, the Board shall hold the conciliation proceeding. It shall be the duty of the Board to endeavour to bring about a settlement of the industrial disupte and the provisions of sections 55, 56 and 58 shall, so far as may be, apply to the proceeding before the Board.

Legislative changes :—

This section corresponds to section 39 of the Bombay Industrial Disputes Act. The words, " During the pendency of any proceedings under the foregoing provisions of the Act" appearing in the beginning of sub-section (1) have been substituted by the words "at any time." Thus under this Act the Provincial Government's power to refer a dispute to a Board is increased.

Scope of the Section.

This section provides that Provincial Government may at any time refer the dispute to a Board of Conciliation and shall be bound to refer the dispute to the Board if the parties agree to do so before the conciliation proceedings have commenced or after they have failed. The Board's power and functions are equivalant to that of the Conciliator i. e. to endeavour to bring about a settlement.

Procedure and powers of Conciliator and Board.

60. (1) A Conciliator or a Board, as the case may be, shall subject to the provisions of this Act, follow in a conciliation proceeding such procedure as may be prescribed.

(2) The proceedings before a Conciliator shall be held *in camera* and any proceedings before a Board may be held in public or *in camera* as the Board may decide.

(3) If a party to an indstrial dispute or a witness or any other person giving any information or producing any decument in a conciliation proceeding makes a request in writing to the Conciliator or the Board, as the case may be, that such information or the contents of such document be treated as confidential, the Conciliator or the Board shall direct that such information or document be treated as confidential :

Provided that the Conciliator or Board may permit the information or the contents of the document to be disclosed to the other party.

(4) Save as provided in sub-section (3), a Conciliator or any member of a Board or any person present at or concerned in the conciliation proceeding shall not disclose any information or the con-

tents of any document in respect of which a request has been made under sub-section (3) without the consent in writing of the party making the request under the said sub-section.

(5) Nothing in this section shall apply to the disclosure of any information or the contents of any document for the purpose of a prosecution under this Act or under any other law for the time being in force.

This section corresponds to section 40 of the Bombay Industrial Disputes Act. The procedure in respect of conciliation proceedings is prescribed by rules. Sub-section (2) is new.

Reference to Industrial Court by Conciliator or Board.

61. A Conciliator or a Board may refer any question of law arising before him or it in any conciliation proceeding, to the Industrial Court for decision. Any order passed by the Conciliator or the Board in such proceeding shall be in accordance with such decision.

This section is new and by it a Conciliator or a Board has been given power to refer a matter of law to the Industrial Court for decision.

Time limit for stages of conciliation proceeding.

62. (1) The Provincial Government shall by general or special order notified in the *Official Gazette* fix a time limit for the completion of each stage of the conciliation proceedings provided for under this Chapter:

Provided that the total period fixed for completion of all stages of a conciliation proceeding shall not exceed one month from the date on which the dispute is entered by the Conciliator in the register under section 55 or is referred to a Board under section 59:

Provided further that the Provincial Government may extend the said period of one month by a further period of a fortnight at a time but not exceeding in any case two months in the aggregate.

(2) Notwithstanding anything contained in sub-section (1), the parties to any industrial dispute may in any case agree to extend the period fixed for the completion of any stage of a conciliation proceeding by any further period and such further period shall be excluded in computing the period of time limit referred to in the said sub-section.

Legislative changes:-

This section corresponds to section 41 of the Bombay Industrial Disputes Act. The only change is that the total period fixed for completing the conciliation proceeding is reduced from two to one month.

The first proviso to sub-section (1) of section 62 clearly says that the total period of time limit fixed for all stages of conciliation proceedings shall

not exceed one month and the second proviso makes it further clear that the Government may extend the said period of one month by a further period of a fortnight at a time not exceeding in any case two months in the aggregate so that if the time is extended the total period for conciliation proceedings cannot exceed three months except that it may be open to the parties to agree mutually that the said period may be extended by any further period and that further period shall be excluded in computing the period of time fixed by the statute. Under the Bombay Industrial Disputes Act the total period was four months.[1]

Completion of conciliation proceeding.

63. A conciliation proceeding shall be deemed to have been completed—

(i) when a memorandum of the settlement arrived at in such proceeding is signed by the parties under sub-section (1) of section 58, or

(ii) when the parties agree in writing to submit the dispute to arbitration, or

(iii) if no settlement is arrived at, when the report of the Conciliator or the Board is published by the Provincial Government, or

(iv) when the time limit fixed for the completion of such proceeding under section 62 has expired.

Legislative Changes:—

This section corresponds to section 42 of the Bombay Industrial Disputes Act and is substantially the same with some additions and alterations. In clause (i) the words under the old Act were, "when a settlement is arrived at". The change here is merely a change in language. Clause (ii) is new. On account of this addition, the conciliation proceedings are deemed to be completed if the parties agree in writing to submit the dispute to arbitration.

Scope Of The Section:-

This section is very important for only after the conciliation proceedings are completed whether successfully or unsuccessfully that the employer will be at liberty to make a change[2] of which he has given the notice under section 42 (1) or may declare a lock-out[3] in respect thereof and the employees will be at liberty to resort to a strike to enforce the change regarding which they have given the notice.[4] Any change made by the employer or lock-out declared by him or strike commenced by the employees before the completion of the conciliation proceedings would be illegal. Also any change made,[5] lock

1. Section 41, Bombay Industrial Disputes Act. The Edward Textiles Ltd. Vs. The Government Labour Officer. Appn. No. 43/1946. Bombay Labour Gazette. (Aug. 1946) Vol. 25. Page 931.
2. Section. 46.
3. Section. 98.
4. Section. 97.
5. Section. 46. (2).

out declared[1] or strike commenced[2] 2 months after the completion of the conciliation proceedings would be illegal. This section lays down when the conciliation proceedings shall be deemed to be completed.

Under the scheme of the Act after the completion of the conciliation proceeding it is open to the workers to resort to a strike and it is also open to the employers to declare a lock-out within two months after the completion of such proceedings.[3]

Time Limit Fixed.

"It is true that the words used in section 42 of the B. I. D. Act (corresponding to section 63 of the present Act) are 'time limit fixed' and it is urged by the petitioners that the word 'fixed' means fixed by an order of Government. But where there is no order as in the present case the word 'Fixed' means fixed according to the section and as I construe section 41 (present section 62) the time limit fixed in that section in absence of any general or special order is the period of two months (one month under the act).

When it is stated in section 42 (corresponding to section 63) that the conciliation proceedings shall be deemed to have been completed when the time limit fixed for the completion of such proceedings under section 41 has expired it would in my opinion follow that where no time limit has been initially fixed at all and where there is no mutual agreement between the parties extending the time, the conciliation proceedings must be deemed to be completed at the end of two (one under this Act) months after they begin. It may be that if no settlement is arrived at, the conciliator's report may be published after the period of two months is over but it cannot be said in that case that the conciliation proceedings are completed when the conciliator's report is published. It is not stated in section 42 that the conciliation proceedings shall be deemed to have been completed when the conciliator's report is published or when the time limit fixed for completion of the proceedings has expired which ever is later. In the absence of such words it would follow that the conciliation proceedings are supposed to be completed at the end of two months after they began" (one month under this Act).

Thus where the conciliation proceedings began on 23rd February and failed on 22nd April and on 23rd April the operatives went on strike even though the report of the conciliator was not published held the conciliation proceedings were completed at the end of two months and the strike was not illegal.[4]

Conciliation proceedings not to be commenced or continued in certain cases.

64. No conciliation proceeding in respect of an industrial dispute shall—

1. Section. 98. (2).
2. Section. 97. (2).
3. Pandurang Hari Vs. The New City of Bombay Manufacturing Co. Ltd. Appn. No. 110/1945. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 601.
4. The Edward Textiles Ltd. Vs. The Government Labour Officer. Appn. No. 43/1946. Bombay Labour Gazette. (May. 1946) Vol. 25. Page 931.

(a) be commenced if—

(i) the representative of employees directly affected by the dispute is a registered union which is a party to a submission relating to such dispute or a dispute relating to an industrial matter similar to that regarding which the dispute has arisen:

(ii) it has been referred to arbitration under the provisions of section 72 and 73:

(iii) by reason of a direction issued under sub-section (2) of section 114 the employers and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award;

(b) be continued after the date on which—

(i) a submission relating to such dispute is entered into by the employer and employees concerned under section 58 and 66;

(ii) the dispute is referred to arbitration under section 72 or 73; or

(iii) the direction referred to in sub-clause (iii) of clause (a) is issued.

COMMENTS.

This section is new. The conciliation proceedings shall not be commenced or continued under the circumstances mentioned in it.

Conciliation proceeding discontinued deemed to be completed.

65. A conciliation proceeding which is discontinued under clause (b) of section 64 shall be deemed to have been completed on the date referred to in the said clause, and the provisions of section 58 with regard to the submission, forwarding and publication of reports shall apply to such conciliation proceeding.

CHAPTER XI.

Arbitration.

This chapter provides for reference of industrial disputes to arbitration. It makes provision for voluntary and compulsory arbitrations. The parties may voluntarily and of their free will submit any industrial dispute to arbitration. It is not obligatory on the parties to refer the dispute to arbitration unlike conciliation proceedings which are obligatory. But sections 72 and 73 empowers the provincial Government to refer any industrial dispute to arbitration of the Industrial Court in the circumstances specified therein. That is compulsory arbitration. The award of the arbitrator both in voluntary and compulsory arbitrations is binding upon the parties.[1]

Once the dispute is referred to arbitration voluntarily by the parties or compulsorily by the Provincial Government, no change can be made,[2] no lock-out can be declared[3], and no strike can be commenced,[4] till the award comes into operation. And after the award comes into operation no change can be made,[5] no lock-out can be declared[6] and no strike can be commenced in contravention of the award.[7]

Submission.

66. (1) Any employer and a Representative Union or any other registered union which is a representative of employees may, by a written agreement, agree to submit any present or future industrial dispute or class of such disputes to the arbitration of any person whether such arbitrator is named in such agreement or not. Such agreement shall be called a submission.

(2) Such submission may provide that the dispute shall be referred to the arbitration of a Labour Court or the Industrial Court.

(3) A copy of every such submission shall be sent to the Registrar who shall register it in the register to be maintained for the purpose and shall publish it in such manner as may be prescribed.

Legislative changes:-

This section corresponds to section 43 of the Bombay Industrial Disputes Act. For the word "Registered Union" in sub-section (1) of section 43 of the Bombay Industrial Disputes Act the words "Representative Union or any other registered union which is a representative of employee" have been substituted. Under that Act it was held that any registered union could enter into an agreement with an employer to submit any industrial dispute to arbitration. It was not

1. S. 114 (1).
2. S. 46 (2)
3. S. 98 (g)
4. S. 97 (a)
5. S. 46 (3).
6. S. 98 (h).
7. S. 97 (i).

necessary that such union should be a representative of the employees.[1]

The law is changed and the registered union which is representative of the employees can only enter into an agreement for reference to arbitration.

Scope of the section:–

This section permits any employer and a Representative Union or any Primary or Qualified Union which is a representative of the employees to enter into an agreement to refer any present or future disputes to private arbitration or to the arbitration of a Labour Court or the Industrial Court. Such an agreement is to be called a submission and the section provides for the registration of all such submissions. In absence of an agreement to the contrary every submission shall be irrevccable provided however that any submission to refer future disputes may be revoked by either party after giving six months' notice to the other party and provides further that before the expiry of the said months the parties may agree to continue the submission for such further period as may be agreed upon by them. The proceedings in arbitration under this chapter are to be in accordance with the provisions of the Arbitration Act of 1940, in so far as they are applicable and the award is to be made after hearing the parties.

Submission can be only of an industrial dispute:–

The submission to arbitration can be only of an industrial dispute and if the dispute is not an industrial dispute, it would be outside the jurisdiction of the Court to give an award on it. Thus where the dispute relating to dearness allowance was submitted to the arbitration of the Industrial Court it was contended that the demand for the dearness allowance was not an industrial matter and therefore the Industrial Court had no jurisdiction to make an order in respect thereof. The Court however held that industrial matter has been defined as, "any matter relating to work, pay, wages etc." and the demand for dearness allowance is a demand relating to work, pay or wages and therefore is an industrial matter and therefore the Court had jurisdiction to decide the matter.[2]

Similarly it was contended that the dispute regarding bonus is not an industrial dispute as grant of bonus is not an industrial matter and therefore the Court had no jurisdiction to entertain the dispute. The Court said, "The first question is whether this Court has jurisdiction to entertain this dispute. Under Section 28 (2) of the Act (corresponding to section 42 of this Act) an employee desiring any change in respect of an industrial matter is entitled to give a notice of change and under section 43 (1) (corresponding to section 66 of this Act) any employer and a registered union may agree by a written agreement to submit any industrial dispute to the arbitration of this Court or the Provincial Government may refer it to this Court under section 49 A (corresponding to section 73 of this Act) as in the present case. An

1. The Government Labour Officer. Ahmedabad Vs. The Anant Mills Co. Ltd. Appn. No. 33/1941. Bombay Labour Gazette. (Oct. 1941) Vol. 21. Page 153.

2. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association. Submission No. 1/45 Bombay Labour Gazette. (Oct. 1945) Vol. 25. Page 107.

industrial dispute is defined in section 3 (13) (corresponding to section 3 (17) of this Act) as any matter relating to pay, wages, reward, hours, privileges, rights or duties of employers or employees or the mode, terms and conditions of employment or non-employment. It is urged on behalf of the Mill Owners' Association that bonus which is a purely gratuitous payment by an employer is not included in this definition.....In our opinion bonus is included in the term 'reward' ".....If the workers say that in a certain year the employers have made handsome profits and that the employers can therefore afford to pay them something more than the stipulated wages, they are asking for the additional payment as a reward for work already done by them which has resulted in such high profits. Such additional payment is not a pure gift because a gift may have no relation to any work done or to be done by the donee but it is a reward in as much as it is asked as an extra payment for work already done. It is true it cannot be enforced in a court of law because it is not a legal right. But it does not follow that it cannot become a subject matter of an industrial dispute between the employers and the workers if the latter demand such payment as reward in the form of a bonus. It can therefore become an industrial matter and thus be the subject matter of an industrial dispute. In that event the whole machinery under the Bombay Industrial Disputes Act comes into operation. It is because there may be demands arising out of the relationship of the employer and the workers which either party can make on the other and which cannot be enforced in a court of law but the settlement of which is desirable for the smooth working of the industry, that the Bombay Industrial Disputes Act is enacted for the purpose of settling such disputes in the Industrial Courts.....We are therefore of the opinion that the demand for bonus is an industrial matter and this Court has jurisdiction to adjudicate on that demand[1].....".

Binding effect of an award:-

An award is binding upon the parties to it under section 114. When a Representative Union is a party to an award, all the employees in the industry in the local area shall be bound by the awad, whether they are members of the Representative Union or not. Even the persons who are not employed in the industry at the time of making an award, but who are subsequently employed will also be bound dy the award, and will be entitled to the benefits thereof.[2]

Any registered union other than a Representative Union can enter into a submission only if it is a representative of employees [section 66 (1).] Under Section 30 (2) a Primary or a Qualified union can be a representative only if the majority of the employees directly affected are its members or if it has been authorised by the employees concerned [section 30 (iii)]. Where it becomes representative by virtue of section 30 (iii) all the employees would be bound

1. The Textile Labour Association, Ahmedabad Vs. The A'bad Mill Owners' Association. Ref. No. 1/1945. Bombay Labour Gazette. (Oct. 1945) Vol. 25. Page 122.

2. The Government Labour Officer Ahmedabad. Vs. The Anant Mills. Co. Ltd. Appn. No. 33/1941. Bombay Labour Gazette (Oct. 1941) Vol. 20. Page 153.

and where it is a representative by virtue of section 30 (ii) all the employees directly affected would be bound whether they are its members or not.

For further comments see section 114.

Contracting out:-

An award cannot be changed or modified even by the mutual consent of the parties, and if an employer attempts to do so even with the consent of the other party such an attempt would not only be a change but an illegal change. Although contracting out is not expressly prohibited by a specific section in the Act, the implications are that at least in the case of an award no change could be introduced by an employer even with the consent of the employee,[1] nor can the right conferred on an employee be waived by him.[2]

Thus non-payment of dearness allowance to the workers in contravention of the terms of an award and in pursuance of a specific agreement between the employee and the Mills Company contrary to the terms of the award is an illegal change.[3]

Termination Of An Award.

Section 116 provides when and how an award can be terminated.

See section 116 and comments thereon.

The Court can allow parties to withdraw a submission.[4]

Contravention of the Terms of an Award.

If an employer makes any change in contravention of the terms of an award or fails to carry out the terms of an award he commits an illegal change[5] and is punishable under section 107. A lock-out in contravention of the terms of an award is illegal[6] and is punishable under section 102. So also a strike commenced in contravention of the term of an award by an employee is illegal,[7] and is punishable under section 103.

Interpretation Of Submission and Awards: Reasonable Construction:—

In a case where the dearness allowance granted under the award was not paid the Court observed, "The award itself says that the dearness allowance shall be paid from the 1st of February 1940, but it does not lay down on what date that dearness allowance was to be paid and therefore the question arises whether withholding or postponement of the payment of the dearness allowance would constitute a change in contravention of the terms of the award. In construing the terms of an award as in construing the terms of a statute, reasonable interpretation must be put as regards matters on which the award

1. The Government Labour Officer, Ahmedabad. Vs. The Anant Mills Co. Ltd. Appn. No. 33/1941. Bombay Labour Gazette. (Oct. 1941) Vol. 20. Page 153.
2. Amalner Girni Kamgar Union Vs. The Pratap Spinning and Manufacturing Co. Ltd. (July. 1942) Vol. 21. Page 1118.
3. Mithi Ratan Vs. The Bhalakia Mills Co. Ltd. Appn. No. 111/43 Bombay Labour Gazette. (July. 1944) Vol. 23. Page 695.
4. The Textile Labour Association Ahmedabad. Vs. The Aryoda Ginning and Manufacturing Co. Ltd. Submission No. 2/1942. Bombay Government Gazette. Part I. Page 2188.
5. Section. 46 (3). Section. 46 (5).
6. Section. 98 (h).
7. Section 97. (i).

or the statute is silent. Therefore in interpreting the award, it must be presumed that the Industrial Court intended that the dearness allowance should be paid within reasonable time after the date when it became due.....The reasonable time cannot be defined with any precision, but I am of the opinion that a period of one month would not be unreasonable.[1]

Interpretation According To The Circumstances.

A submission was made by the Textile Labour Association Ahmedabad and the Ahmedabad Mill Owners' Association regarding the question of dearness allowance to be granted to the workers and the Industrial Court made an award granting it to the workers. The parties disagreed as to the exact meaning of the word "workers" used in the submission and the award. So the matter came up before the Industrial Court. The Labour Association contended that the word 'worker' was used in the same sense as the term "employee" as defined in the B. I. D. Act. The Mill Owners's Association contended that the word "worker" was used in the same sense as the term "worker" in the Factories Act. The Court said, "In our opinion we cannot decide the point by referring to the definition of the word 'employee' as appearing in the Bombay Industrial Disputes Act or to the definition of the word "worker" as appearing in the Factories Act for construing the term "worker" appearing in the terms of the submission. In our opinion the terms of the submission must be considered in the light of the circumstances giving rise to the dispute. We think that the submission was made with respect to persons who are employed by the mills in connection with the textile industry, for the payment of remuneration to whom, the mills hold themselves responsible, whose cost of living was affected by the rise in prices of food stuffs and to whom the grant of dearness allowance would come as an appreciable relief."[2]

This interpretation of the word "worker" has been of a great practical importance in Ahmedabad, a great centre of textile industry. Numerous cases came before the Industrial Court for decision whether particular employees are "workers" within the meaning of the award as interpreted above.

The Court held that clerical and superior staff whose pay does not exceed Rs. 75 per month would be entitled to the dearness allowance. So also the part-time workers, badlies and patiwala, watch and ward men, supervisors, jobbers and mukadams,[3] water man[4] and a gardener in the mills[5] whom though they may not be working directly in connection with machines, the rise in cost of living affects as much as the other workers, would be entitled to the dearness allowance under the award.

1. The Textile Labour Association Ahmedabad. Vs. The Maneklal Harilal Spinning and Manufacturing Co. Ltd. Appn. No. 12/1941 Bombay Labour Gazette. (April, 1941) Vol. 20. Page 636.

2. The Textile Labour Association Ahmedabad. Vs. The Ahmedabad Mill Owners' Association. Appn. No. 19/1940. Bombay Labour Gazette. (Oct. 1940.) Vol. 20 Page 148.

3. Ibid.

4. Krishnaram Vasantbhai Vs. The Vijaya Mills Co. Ltd. Appn. No. 101/1945. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 847.

5. Jivan Kalidas Vs. The Vijaya Mills. Co. Appn. No. 100/1945. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 846.

The import of the word "worker" as occurring in the award is not limited by the word permanent or temporary nor limited only to classes or categories enumerated in the notification dated 12th June 1939 issued by the Registrar. So temporary workers were held to be entitled to dearness allowance under the award.[1]

Where the average pay of the applicants for the majority of calendar months did not exceed Rs. 75/- per month, during the period of their service, held they would be entitled to the dearness allowance under the award.[2]

Canteen staff.

Where the mills ran a canteen, held that, "The conditions laid down above are satisfied in the case of canteen workers. These employees in the hotel which is maintained by the opponent are essentially employed in connection with the textile industry. Although the hotel is run on welfare basis and the mill may not stand to profit thereby it does not cease to be a hotel run in connection with the textile industry. Mill canteen staff also forms an occupation, and therefore the mill canteen staff is entitled to the benefit of the dearness allowance under the award."[3]

But it was held that the contractors' employees are not entitled to the dearness allowance for the mills are not responsible for their ordinary remuneration. The responsibility for paying the dearness allowance therefore cannot be fastened on them.[4]

But where dhobighat workers were not engaged on contract basis they were held to be entitled to the dearness allowance under the award, the fact that they were engaged on daily wage being irrelevent.[5]

Working condition :-

In the same submission the question of dearness allowance was to be fixed having regard to the working condition of the *industry*. Where one of the mills bound by submission contended that its financial condition was not such as to justify any grant of dearness allowance, it was held, "Having regard to the terms of submission it is not a factor to be taken into account. The submission implies that we have not to take into consideration the financial condition of each individual unit but we have only to consider the general working condition of the *industry* in Ahmedabad as a whole. In our opinion therefore there is no justification differentiating the case of these mills from all the other mills in Ahmedabad" The Industrial Court held that the allowance should be granted to the workers of these mills on the same scale as mentioned

1. Velaji Zaver Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appns. Co. 132/1943 to 140/1943. Bombay Labour Gazette. (March. 1944) Vol. 23. Page 448.

2. Yashvant Ramji and others Vs. The Silver Cotton Mills Co. Ltd. Appn. No. 76/1945. Bombay Govt. Gazette Part 1. (Dec. 1946) Page. 3713.

3. The Government Labour Officer Vs. The Silver Cotton Mills. Co. Ltd. Appn. No. 24/1942. Bombay Labour Gazette. (Aug. 1942) Vol. 21. Page 1187.

4. Appn. No. 19/40. Supra.

5. The Textile Labour Association Ahmedabad. Vs. The New Swadeshi Mills. Co. Ltd, Appn. No. 30/1942. Bombay Labour Gazette. (Sept. 1942) Vol. 22. Page 48.

in the award.[1]

For the manner of publication of a submission under sub-section (3) of section 66 see rules.

67. Every submission shall in the absence of any provision to the contrary contained therein be irrevocable :

Submission when revocable.

Provided that a submission to refer future disputes to arbitration may at any time be revoked by any of the parties to such submission by giving the other party six months' notice in writing:

Provided further that before the expiry of the said period of six months the parties may agree to continue the submission for such further period as may be agreed upon between them.

This section reproduces verbatim section 44 of the Bombay Industrial Disputes Act.

Withdrawal of a submission.

But the court has power to allow parties to withdraw a submission.[2]

68. The proceedings in arbitration under this Chapter shall be in accordance with the provisions of the Arbitration Act, 1940, in so far as they are applicable, and the powers which are exercisable by a Civil Court under the said provisions shall he exercisable by a Labour Court and the Industrial Court.

Proceedings in arbitration; X of 1940.

Legislative changes:-

This section corresponds to section 45 of the Bombay Industrial Disputes Act.

For the words, "Schedule II in the Code of Civil Procedure Code 1908", the words "Arbitration Act 1940" have been substituted and the words "Labour Court" have been added.

69. The arbitrator may refer any question of law arising before him in any proceeding under this Act to the Industrial Court for its decision. Any award made by the arbitrator shall be in accordance with such decision.

Special case to be stated to Industrial Court.

Legisilative changes:-

This section corresponds to section 47 of the Bombay Industrial Disputes Act, with slight verbal changes,

1. The Textile Labour Assosiciation Vs. The Shri Ambica Mills, Ltd. No. 1 and 2. Appns. No. 55/1940. 56/1940. Bombay Labour Gazette. (Jan. 1941) Vol. 20. Page 351.

2. The Textile Labour Association Vs. The Aryodaya Ginning and Manufacturing Co. Ltd. Sub. No. 2/1942. Bombay Government Gazette. Part I. dated 23rd September 1943. Page 2188.

70. The arbitrator shall, after hearing the parties concerned, make an award which shall be signed by him.

Award by arbitrator.

After hearing the parties:

This section corresponds to section 48 of the Bombay Industrial Disputes Act.

It makes it imperative that the arbitrator or the Industrial Court where the dispute is referred to it for arbitration, shall make an award after hearing the parties concerned. Where the opponent mills company was not heard, the award made by the Industrial Court was held to be not binding upon the mills company and therefore it was held that they did not commit any illegal change by failing to act in accordance with the award.[1]

The position in such a case would be that the award is not binding but the submission would remain in force and would be heard and adjudicated upon.[2]

71. Notwithstanding anything contained in this Chapter, if no provision has been made in any submission for the appointment of an arbitrator or where by reason of any circumstance no arbitrator is appointed, such dispute shall be referred to the arbitration of a Labour Court or the Industrial Court, as the Provincial Government may determine.

Dispute to be referred to Labour Court or Industrial Court if no arbitrator appointed.

This section corresponds to section 49 of the Bombay Industrial Disputes Act. This section lays down that if no provision has been made in any submission for the appointment of an arbitrator or where by reason of the act of the parties or any circumstances the appointment of an arbitrator is not possible, such dispute shall be referred to the Industrial Court or the Labour Court as the Provincial Government may determine.

72 (1) Notwithstanding anything hereinbefore contained the Provincial Government may, at any time on the report of the Labour Officer or on its own motion, refer any industrial dispute between, employees and employees to the arbitration of a Labour Court or the Industrial Court.

Disputes between employees and employees may be referred by Provincial Government to arbitration of Labour Court or Industrial Court.

(2) The provisions of this Chapter with such modifications as may be prescribed shall apply to such arbitration.

(3) The employers of such employees shall in the prescribed manner be made parties to such arbitration.

---

1. The Textile Labour Association Ahmedabad. Vs. The Shri Ambica Mills. Ltd. Appn. No. 17/1940. Bombay Labour Gazette, (Nov. 1940) Vol. 20. Page 201.
2. Ibid.

Section 72 is new.

It empowers the Provincial Government to refer an industrial dispute between employees and employees to the arbitration of the Industrial Court or the Labour Court.

It is a provision for compulsory arbitration between employees and employees. The next section provides for compulsory arbitration between employers and employees.

For the modifications to be prescribed under sub-section (2) and the manner of making the employers parties to arbitration under sub-section (3) of section 72, see rules.

Provincial Government may refer industrial dispute to Industrial Court for arbitration.

73. Notwithstanding anything contained in this Act, the Provincial Government may, at any time, refer an industrial dispute to the arbitration of the Industrial Court, if on a report made by the Labour Officer or otherwise it is satisfied that--

(1) by reason of the continuance of the dispute--

(a) a serious outbreak of disorder or a breach of the public peace is likely to occur; or

(b) serious or prolonged hardship to a large section of the community is likely to be caused; or

(c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed: or

(2) the dispute is not likely to be settled by other means: or

(3) it is necessary in the public interest to do so.

Legislative Changes.

This section corresponds to section 49, A of the Bombay Inudstrial Disputes Act which was inserted into that Act by Bombay Act No. X of 1941. The words, "if on a report made by the Labour Officer or otherwise" are new. Clauses (2) and (3) are new and they give a wider field for exercise of Governmental discretion to refer industrial disputes to arbitration.

"Such a course has been rendered necessary by frequent calls on Government during recent years from employers as well as employees for compulsory adjudication of disputes."[1]

Scope Of The Section.

This is one of the most controversial sections in the Act. It empowers the Provincial Government in the circumstances specified therein to refer any

1. Statement of Objects and Reasons.

industrial dispute to arbitration of the Industrial Court whether the parties are willing or not. It, in effect, provides for compulsory arbitration of disputes irrespective of the consent of parties. Compulsory arbitration of disputes is a contradiction in terms. For the term arbitration connotes voluntarily agreeing to be bound by the decision of a third person in whom the disputants have confidence.

The objections seem to be that firstly the workers are compelled against their will to have the dispute arbitrated upon. Secondly the arbitrator is not of their own choice. Thirdly there are no accepted rules or standards for deciding the disputes and the Industrial Court will be guided only by its ideas of what is just and fair which would vary with the different judges who may not be free from class bias and fourthly once the award is made the workers cannot go on strike, even if the award is unacceptable to them.

The argument in support of it is that. "In England and United States, labour, owing to its organised strength, can bring to bear sufficient pressure on the employers to secure a fair deal in a particular set of circumstances. For it, external intervention can therefore have very little attraction. Labour in India has on the other hand failed to forge such sanctions and it is often reduced to a stage of helplessness, unless the Government goes to its succour. Compulsory arbitration in a state which is controlled by vested interests and is administered to keep intact the privileges and presumption of the capitalist class would spell the perpetuation of an unjust 'status quo.' But where a Government pledges itself to the elimination of all sources of exploitation and to ensuring rising standard of living for masses, the whole out-look changes and it would be nothing short of crime to hamper the activities of such Government by interruptions of processes of production when means are provided for the settlement of disputes by impratial tribunals."[1]

THE COURT NOT TO SEE SUFFICIENCY OF REASONS :

The court's jurisdiction to depend upon industrial dispute :

"When a reference under this section is made to this Court, its jurisdiction to entertain it, does not depend on whether the Government had sufficient reasons to be so satisfied or whether a demand leading to the dispute had been made by only some workers or whether the procedure for making demand had been followed. It is not the function of this court to inquire why a demand by some workers had led the Government to treat it as a dispute between all the employees on the one hand and all the employers on the other. The demands may be made by some workers but if the Government thinks that they are of such a nature that it seriously affects the whole industry, e. g. standardisation of wages, it is for the Government to consider whether in view of its serious consequences the dispute should be decided as a whole for peaceful working of the industry and avoidance of hardships to the community .....We are not concerned with the sufficiency or otherwise of the reasons which satisfied the Government to refer the dispute to us.....The body which brings the demands to the notice of the Government may not be authorised

1. Mr. Gulzarilal Nanda, Minister of Labour, Government of Bombay.

under the Act but if the Government is satisfied that the demands have led to a dispute it can act under this section. The fact that the workers would not be represented by any authorised union may lead the Government to take action if the circumstances require. We agree with the Advocate General that no formal demand and refusal is necessary before the Government can take action under this Section" A union acting on behalf of some employees had given a notice of demands about standardization of wages, dearness allowance, rise in basic wages, to the Mill Owners' Association, Bombay regarding the above matters. The Association took no notice of these demands presumably because the Union had no status under the Act. A strike notice was to be given by some of the workers if the employers did not entertain the proposals for amicable settlement or arbitration. Therefore, the Government intervened, issued a Press Note followed by a Notification referring the said matters to the arbitration of the Industrial Court treating it as a dispute between all the employees of the cotton textile mills in Bombay and all the employers in Bombay. The contention was that there was no industrial dispute as no employer had considered and rejected the demands. It was over-rulled and it was held on on the facts that an industrial dispute had arisen. That it is not the function of Industrial Court to see the reasons which led the Government to treat the dispute as a general dispute or which satisfied them that the Mill Owners' Association was not willing to accede to the workers' demands. All that the Court has to see is whether on the materials before it, the dispute which has arisen according to the Government, relates to an industrial matter or not. On that point there is no doubt that the demands are industrial matters.[1]

At any time.

The words 'at any time' mean that the reference can be made at any stage of the dispute. This section is an emergency measure and it therefore provides for a reference to compulsory arbitration without following the general procedure laid down in the Act for a voluntary arbitration.[2]

74. (1) The arbitrator, Labour Court or Industrial Court as the case may be, shall forward copies of the award made by him or it to the parties, the Commissioner of Labour and the Registrar.

Notice of award to parties.

(2) On receipt of such award, the Registrar shall enter it in the register kept for the purpose and shall publish it in such manner as may be prescribed

This section corresponds to section 50 of the Bombay Industrial Disputes Act. Changes are that under that Act, the notice of award was to be given to the parties, while under this Act a copy of the award is to be forwarded to the parties, the Commissioner of Labour and the Registrar and under this

1. In the matter of the arbitration between the Mill Owners' Association Bombay and the employees in the cotton textile mills. Reference No. 1/1946. Bombay Labour Gazette. (August. 1946) Vol. 25. Page 926.

2. Ibid.

Act it is to be published in the manner prescribed. Under the old Act it was to be published in the Official Gazette.

Date on which award shall come into operation.

75. The award shall come into operation on the date specified in the award or where no such date is specified therein on the date on which it is published under Section 74.

This section corresponds to section 51 of the Bombay Industrial Disputes Act. The change is that under this Act the award is to come in force on the date on which it is published. Under the Bombay Industrial Disputes Act, it came into force on the date on which it was registered.

Completion of Arbitration proceeding.

76. The arbitration proceeding shall be deemed to have been completed when the award is published under section 74.

This section corresponds to section 52 of the Bombay Industrial Disputes Act.

CHAPTER XII.

Labour Courts.

"The Provisions relating to Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and lock-outs occurring over a series of years has revealed the fact that a large proportion of stoppages arises out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one sided exercise of discretion in dealing with them creates a large volume of discontent and bitterness which lead to frequent disturbances of the peace of the industry and cause serious loss of production and workers' earnings.

The conciliation procedure in the Act of 1938 has not been found to be quite suitable for dealing with disputes of this character, both because of the length of time which the proceedings take and the lack of finality at the end of the proceedings. A remedy for this will be found in the Labour Courts which will be instituted under the new Act to ensure impartial and relatively quick decision regardiag illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up. (Statement of Objects and Reasons.)

77. The territorial jurisdiction of Labour Courts shall extend to the local areas for which they are constituted.

Territorial jurisdiction.

78. (1) A Labour Court shall have power to—

Powers of Labour Court.

A. decide—

(a) disputes regarding—

(i) the propriety or legality of an order passed by an employer under the standing orders;

(ii) the application and interpretation of standing orders;

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III and matters arising out of such change;

(b) industrial disputes—

(i) referred to it under section 71 or 72;

(ii) in respect of which it is appointed as the arbitrator by a submission;

(c) whether a strike, lock-out, or any change is illegal under this Act;

B. try offences punishable under this Act and where the payment of compensation on conviction for an offence is provided for, determine the compensation and order its payment;

C. require any employer to—

(a) withdraw any change which is held by it to be illegal, or

(b) carry out any change provided such change is a matter in issue in any proceeding before it under this Act.

(2) Every offence punishable under this Act shall be tried by the Labour Court within the local limits of whose jurisdiction it was committed.

Explanation.—A dispute falling under clause (a) of paragraph A of sub-section (1) shall be deemed to have arisen if within the period prescribed under the proviso to sub-section (4) of section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso.

COMMENTS.

The provision for the establishment of Labour Courts is new. Under this Act the Labour Courts are the courts of original jurisdiction and the Industrial Court is the superior Court of appeal, revision, and reference in respect of the industrial matters covered by the Act and they, in between themselves form the "Labour judiciary." No civil or criminal court can call into question their decision, order or award."[1]

The Labour Court's jurisdiction is fourfold.

It has the power to (1) decide matters arising of standing orders viz. the properity or legality of the orders passed under the standing orders and the application and interpretation of the standing orders and changes in respect of industrial matters specified in Schedule III.

(2) Arbitrate upon and decide disputes referred to its arbitration.

(3) Decide whether a strike, lock-out or a change is legal or not, and

(4) Try offences punishable under the Act.

But the Labour Courts have no jurisdiction to decide any matter which does not fall under the provisions of this section. Its jurisdiction in confined to matters enumerated in this section.

Under the Bombay Industrial Disputes Act where an application was made for a declaration that certain persons were not the duly elected representatives of the employees concerned, it was held that in view of the terms of section 55 and section 53 of the Bombay Industrial Disputes Act it was

1. Sections 86 and 95.

not competent to the Industrial Court to grant the declaration.[1]

Comparison with the old law.

Under the Bombay Industrial Disputes Act there were no Labour Courts. Under that Act the Industrial Court was invested with the power to perform some of the functions described in paragraph (A) of sub-section 78 (1). The Industrial Court used to decide whether a strike, lock-out or change is illegal or not, under section 55 of the Bombay Industrial Disputes Act (which corresponds to section 79 (1) (A) (c) of this Act), arbitrate upon the submissions referred to it under sections 43 and 49 A of that Act and to decide the legality of orders passed under the standing orders in so far as they constituted an illegal change. There was no appeal from its decision. The offences under that Act were tried and punished by the ordinary criminal courts and the appeals and revisions from the orders passed by these courts were subject to the Criminal Procedure Code and the Industrial Court had nothing to do with them. Under this Act the trial and punishment of offences under the Act is left to the Labour Courts and the appeals therefrom lie to the Industrial Court. Thus the criminal jurisdiction under the Act has now been solely conferred upon and confined to the Labour Courts and the Industrial Court and ordinary criminal courts' jurisdiction has under this Act ceased The Industrial Court had under that Act no power similar to that conferred upon Labour Courts under paragraph (c) of sub-section (1) to require an employer to withdraw any illegal change or to carry out any change. Its powers were merely declaratory. Under this section the Labour Court has powers to require the employer to carry out a change or withdraw an illegal change.

S. 78 (1) (a) : Propriety :

"The Bombay Industrial Relations Bill goes much further and provides that an employee who feels aggrieved by the manner in which a standing order has been complied with would be entitled to approach the Labour Court, and the Court has power to decide regarding the *propriety* of any order of the management in such cases". (Mr. Gulzarilal Nanda, Minister of Labour, Government of Bombay.). So under this Act the Labour Court has powers to decide regarding the propriety of any order made by the management under the standing orders. Under the Bombay Industrial Disputes Act the Industrial Court held that if the procedure has been complied with the Court had no powers to investigate into the propriety of the order nor the sufficiency of the reasons. This Act goes much further.

Matters Covered By Schedule III :—

"The employee can also seek redress at the hands of the Labour Court in respect of grievances relating to employment, compensation for stoppages, equipment materials, health, safety, welfare amenities etc. This function of the Court is found to be very welcome. Taking these matters out of the range of direct action and reserving them for judicial decisions is not being opposed, because it is very well realised that for the day to day complaints of the workers

1. Chaman Balchand Vs. The Manekchowk and the A'bad Manufacturing Co. Ltd. Appn. No. 57/1948. B. L. G. (Feb. 1941) Vol. 20, Page 427.

the weapon of the strike affords very little help. In 90 cases out of 100, the workers would rather submit to inevitable hardships than court the loss and privations which the strikes entail. It is remembered that of all such strikes as actually occurred in respect of such matters very few had favourable outcome. The employers resent this new arrangement because it amounts to a total deprivation of their uncontrolled discretion in dealing with questions of this type." (Mr. Gulzarilal Nanda, Minister of Labour, Govt. of Bombay.)

Criminal liability of a limited company :

A limited company is a legal entity and quite capable of being an employer. In fact most of the private employers in the country are companies.[1]

Commencement of proceedings.

79. (1) Proceedings before a Labour Court in respect of disputes falling under clause (a) of paragraph A of sub-section (1) of Section 78 shall be commenced on an application made by any of the parties to the dispute, a special application under sub-section (3) of section 52 or an application by the Labour Officer and proceedings in respect of a matter falling under clause (c) of the said paragraph A on an application made by any employer or employee directly affected or the Labour Officer.

(2) Every application under sub-section (1) shall be made in the prescribed form and manner.

(3) An application in respect of a dispute falling under clause (a) of paragraph A of sub-section (1) of Section 78 shall be made–

(a) if it is a dispute falling under sub-clause (i) or (ii) of the said clause, within three months of the arising of the dispute;

(b) if it is a dispute falling under sub-clause (iii) of the said clause, within three months of the employee concerned having last approached the employer under the proviso to sub-section (4) of section 42.

(4) An application in respect of a matter falling under clause (c) of paragraph A of sub-section (1) of section 78 shall be made within three months of the commencenment of the strike or lock-out or of the making of the illegal change, as the case may be.

Competency to make an application :

This section is important. It lays down as to who can move the Labour Court by making an application to it. Any person other than those mentioned in the section is not entitled to make an application and the application made

1. Cri. Ref. No. 49/1941 Per. Beaumont C. J. and Sen. J. (High Court Judgment).

by such a person will be dismissed.

As regards disputes falling under clause (a) of paragraph A of sub-section 78 (1), the application is to be made by any of the parties to the dispute or the Labour Officer. A special application may be made to it under Section 52 (3). But can a registered union which is a representative of the employees make an application to the Labour Court in respect of disputes falling under section (79) (1) (A) (a) ? Such a union is competent to make an application if it can be considered to be a "party" within the meaning of this sub-section. In proceedings in respect of matter falling under clause (c) of Section 79 (1), A. i. e. in respect of disputes whether a strike, lock-out or change is illegal, the application can be made by an employer, employee directly affected or Labour Officer. The application made by any other person will be incompetent and will be dismissed.

Employee directly affected:-

The application for declaring a change or lock-out to be illegal can be made by a Labour Officer or an employee directly affected. Where the Labour Officer is not the applicant, the person applying must be an employee, and he must be directly affected. Unless these conditions are fulfilled, he is not competent to move the Labour Court. The word employee has been defined in section 3 (13) of the Act. Unless section 55 of the Bombay Industrial Disputes Act an employee concerned could make an application for declaration that a lock-out or a change is illegal. Under this section for the words "employee concerned" the words "employee directly affected" are substituted. The effect of the change seems to make law more stringent. For the words "directly affected" are rather narrower than the words "concerned." However the following decisions of the Industrial Court under section 55 of the B. I. D. Act would be good law in the cases falling under sub-clause (c) of paragraph A of section 78 (1) of this Act.

1. The applicant must be an employee within the meaning of the definition of the term in section 3 (13): otherwise the application will not lie. The applicant was discharged by the mills after 14 days' notice. He applied to the Industrial Court praying thatthe mills had not filled up the post falling vacant by his discharge and therefore they have committed an illegal change by causing a reduction of a permanent character in the number of persons employed. Held that the applicant was not an employee and therefore he had no 'locus standi' to make an application. The Court observed, "On the question of discharge there is no doubt that nothing is illegal. That point has been conceded by the learned counsel on behalf of the applicant. He however alleges that no body else was appointed in his place and that therefore there was a reduction amounting to an illegal change. In my opinion however the applicant is not entitled to take up this point at all. Under section 55 of the Bombay Industrial Disputes Act 1938, the application for illegal change is to be made either by an employee concerned or representative of the employees or the Labour Officer. The petitioner cannot be regarded as an 'employee concerned,' because after his valid discharge from the mills within the meaning of the definition of the term in section 3 (10) [Sec. 3 (13) under this Act],

he ceases to be an employee of the Mills. Under that definition an employee means any person employed to do any skilled or unskilled, manual or clerical work and includes an employee discharged on account of any dispute relating to a change in respect of which a notice is given under section 28 of the Act. As the employee in the present case was not discharged in respect of any change for which notice had to be given, he does not come within the definition. After his discharge therefore he ceases to be an employee and he has no 'locus standi,' to make this application. If at all, any reduction is effected by the mill, the only person who could make an application is the Government Labour Officer"[1]

Where an employee who was properly discharged made an application alleging that the mills committed an illegal change by appointing on a large scale extra hands as "temporary" for work of a permanent character, the Court held that the applicant having been properly discharged was not entitled to file the application for an illegal change.[2]

Similarly where an employee who was validly discharged made an application praying that the grant of bonus by the Company subject to certain restrictions was an illegal change, held that as the applicant was not the employee of the mill on the date of the application and therefore he was not an employee and therefore he had no 'locus standi' after his discharge to make an application. The words, "and includes an employee discharged on account of any dispute relating to a change in respect of which notice is given under section 28" clearly show that all persons discharged for other reasons are excluded from the meaning of the term employee"[3]

Where an operative who had been validly discharged by 14 days' notice applied after his discharge for a declaration that the mills committed an illegal change in as much as they had not paid him during his service the dearness allowance payable under the award of the Industrial Court, held that under section 55 of the Act the application could be made by the employee concerned, a representative of the employee concerned or a Labour Officer. The service of the applicant had been terminated on 12th November 1945. Clearly therefore from 13th November 1945 the applicant was no longer an employee of the mill company. Therefore after that date he had no 'locus standi' to make an application of this kind. Therefore the application having been made on 29th November 1945 could not lie and was dismissed.[4]

II. Such applicant, even though an employee, must be directly affected.

1. Ganpat Rambhau Gayekwar Vs. The New Pralhad Mills Ltd. Appn. No. 16/1941. Bombay Labour Gazette. (July. 1941) Vol. 20. Page 935.

2. Govind Gangaram Gayekwar Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Appn. No. 23/1944. Bombay Labour Gazette. (April. 1945) Vol. 24. Page 491.

3. Sāvadeo Ganpat Savant Vs. The New Pralhad Mill Ltd. Appn. No. 87/1944. Bombay Labour Gazette. (June. 1946). Vol. 25. Page 760.

4. Dahyabhai Kalidas Vs. The Vijaya Mills Co. Ltd. Appn. No. 114/1945. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 848.

Natwarlal Sankalchand Vs. The Vijaya Mills Co. Ltd. Appn. No. 113/45. Bombay Labour Gazette. (July. 1946) Vol 25. Page 859.

Yashvant Ramji Vs. The Silver Cotton Mills Co. Ltd. Appn. No. 76/1946 Bombay Labour Gazette. Part I (19th. Dec. 1946.) Page 3713.

The applicants who were permanent employees alleged that certain other persons who should be treated as permanent operatives in view of the work done by them have been treated as temporary operatives and therefore the mills have committed an illegal change. The Court held that under section 55 of the Bombay Industrial Disputes Act, the Industrial Court may declare any change illegal on the application of the employee concerned or a representative of the employees concerned or the Labour Officer. The application was made neither by the representative of the employees nor by the Labour Officer. The employees concerned were the persons who have been treated as temporary operatives and they had not applied, therefore the application made by the applicants was not maintainable.[1]

III. The applicant is an employee directly affected. He has a right to commence proceedings for declaring an illegal change, but the declaration would be only in respect of the employee and not in respect of the General Body of workers.

Thus where there was a registered settlement between the mills and General Body of workers who were represented by five elected representatives, some of the workers made an application for a declaration that the mills have committed an illegal change by contravening the terms of the settlement. It was contended on behalf of the mills that as the contract was with the General Body of the workers, the application could be made only by the General Body through elected representatives, or a representative union or the Labour Officer and that it was not open to the individual workers to make an application. Held over-ruling the contention that, "It was not necessary that the application should be made on behalf of the general body of the workers. Under section 55 of the Bombay Industrial Disputes Act an application may be made to the Industrial Court by an employer, an employee concerned, or a representative of the employees concerned or the Labour Officer for a decision whether any change made is illegal. This section gives the right to any employee concerned to file an application for the purpose of having a declaration that any change is illegal. The words used are "employee concerned" which in our opinion in the present case mean employee concerned in the observance of the term of the settlement. It is undoubtedly true that it would have been open to a representative of the employees or the Labour Officer to file such an application as the present one in which case the declaration would have been given in favour of the general body of workers if the contention urged on their behalf was upheld by this court. But that does not mean that an employee concerned in the observance of the terms of the settlement is not entitled to file an application when section 55 of the Act in express term authorises him to do so. It is true that when an application has been made by an individual employee, it would enable a declaration to be given only in respect of that employee and not in respect of the general body of workers. The application is therefore maintainable at the

1. Sakharam Jayaram, Vs. The Khatau Makanji Spinning and Weaving Mills Co. Ltd. Appn. 158/1943. (Jan. 1943), Bombay Lab Gazette. Vol. 23, Page 322.

instance of the present applicants."[1]

Note;—Under Section 55 of the Bombay Industrial Disputes Act which corresponds to paragraph A clause 1 (c) of section 79, beside others a representative of employees also could make an application to the Industrial Court, as mentioned in the ruling quoted above but under this Act, proceeding in respect of matters falling under clause (c) of paragraph A of sub-section 78 an application to the Labour Court can be made by an employer, employee directly affected or the Labour Officer. There is no mention of representative concerned in this section. Section 33 provides for representation of employees before the Industrial and Labour Courts in proceedings mentioned in it.

Withdrawal of an application :-

It was held under the Bombay Industrial Disputes Act that if a person who has made an application for declaring a strike to be an illegal and wants to withdraw, there should be no objection whatever in allowing him to withdraw. For the application is merely for a declaration and if the applicant does not want that declaration it is open for him to withdraw the application.[2]

It was held in that case that where the mills company gave an assurance to the worker that if they abandoned the strike and resume work the application would be withdrawn, the application would not be tenable.[3]

But the same Judge who decided the above application stated in other case that, "I am surprised that argument is made that opponents Nos. 2 to 7 resumed work because of an understanding alleged to have been given to them by the manager of the mills that he would not proceed against them under the Bombay Industrial Disputes Act in case they went back to work. I do not see how such an understanding can alter the merits of the case."[4]

Dismissal for want of prosecution.

An application for declaration that a strike is an illegal one would be dismissed for want of prosecution if no body remains present on behalf of the Mills even though the opponents admi tthe strike. However it would be open to them to make a fresh application on the same facts.[5]

Compromise of applications.

Under the Bombay Industrial Disputes Act, if the parties come to an agreement in respect of the subject-matter of the application for declaration

1. Vithoba Shivram Vs. The Digvijaya Spinning and Weaving Co Ltd. Appn. No. 218/1940. Bombay Labour Gazette. (Nov. 1944) Vol. 24. Page 182.

2. The Broach Fine Counts Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer. A'bad and others. Application No. 20/1943. Bombay Labour Gazette. (Sept. 1943) Vol. 23. Page 25.

3. Ibid.

4. The Broach Fine Count Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer. Appn. No. 219/1943. Bombay Labour Gazette. (March. 1945) Vol. 24. Page 410.

5. The Broach Fine Counts Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer. A'bad. Appn. No. 52/1942. Bombay Labour Gazette. (March. 1943) Vol. 22. Page 457.

Sitaram Meghram Vs. The Bharat Suryodaya Mills Co. Ltd. Appn. No. 220/1943. Bombay Labour Gazette. (March. 1945) Vol. 24. Page 412.

under section 55 of the Act, the application would be disposed of.[1]

Exparte Application :

If no written statement is filed by opponent nor any appearance is put in even at the time of hearing on the broad principle that the statements not denied should be taken as having been admitted the Court would decide to act on the applications duly verified and allow them.[2]

RES JUDICATA : Fresh Application by another set of workers of the same mill on the same subject-matter :

Some of the workers of the mill made an application for declaration that the mills committed an illegal change by not including the special war-time allowance in calculating bonus. The application was dismissed. Then other workers of the same mills made an application for illegal change. The Court held that, "A fresh application by a different set of workers who are dis-satisfied with the orders of this Court on precisely the same subject matter which was the basis of similar applications which were filed by another set of workers belonging to the same department is clearly not maintainable. The hearing of this application would be tantamount to re-opening the matters already decided by this very court after hearing the parties' learned Advocates for which I am afraid there is no provision anywhere in the Bombay Industrial Disputes Act."[3]

Summoning of parties and procedure at inquiry.

80. (1) On receipt of an application under section 79 the Labour Court shall summon all parties affected by the dispute to appear, and shall hold an inquiry.

(2) In inquiry under sub-section (1) the Judge presiding over the Labour Court shall himself, as such inquiry proceeds, record a minute of the proceedings in his own hand, embracing the material averments made by the parties affected and the material parts of the evidence. The decision shall be signed by him and shall set forth the grounds on which it is based.

Reference to Industrial Court by Labour Court.

81. A Labour Court may refer any question of law arising in any proceeding before it to the Industrial Court for decision. Any order passed by the Labour Court in such proceeding shall be in accordance with such

---

1. Sutar Bhimji Dharamshi Vs The Bharat Suryodaya Mills Co. Ltd. Appn. No. 11/1944. Bombay Labour Gazette (March 1945) Vol 24. Page 415.

The Textile Labour Association, Ahmedabad. Vs. The Ahmedabad Laxmi Cotton Mills Co, Ltd. Appn. No. 161/1943. Bombay Labour Gazette. (Oct. 1944) Vol. 24. Page 91.

Nana Jiva Vs. The Maneklal Harilal Spinning and Manufacturing Co. Ltd. Appn. No. 22/1944. Bombay Labour Gazette. (Feb. 1945) Vol. 24. Page 356.

2. Hiralal Ashara. Vs. The Hathising Manufacturing Co. Ltd. Appn No. 8/43 and 28/43 Bombay Labour Gazette. (Dec. 1943) Vol. 23. Page 263.

3. Gulam Rasul Mahomed Vs. The Monogram Mills. Co. Ltd. Appn. No. 73/1945 Bombay Labour Gazette. (July. 1946) Vol. 25. Page 858.

decision.

Cognizance of offences.

82. No Labour Court shall take cognizance of any offence except on a complaint by the person affected of facts constituting such offence or on a report in writing by the Labour Officer.

COMMENTS.

This section lays down that only the person affected can file a complaint in respect of an offence under the Act. A complaint by any other person will not be entertained. Of course the Labour Officer can make a report on which the court will take cognizance of an offence. Under Section 78 (1) an application for deciding a strike, lock-out or change is to be made. It should be made besides others by an employee directly affected, while a complaint as regards an offence is to be made by the person affected. Is the difference in language intentional ? From the language it seems that an employee though indirectly affected may make a complaint in respect of an offence under the Act including the offence of committing an illegal change or lock-out. For though indirectly affected he is a person affected, but he cannot make an application for deciding whether change or lock-out is illegal

OFFENCES UNDER THE ACT: Withdrawal, dismissal and composition;-

Under section 83 of this Act, the provisions of the Code of Criminal Procedure apply to trial of offences under it except in so far as special provisions are made under this Act. Section 5 (2) of the Criminal Procedure Code is to the same effect. Under this Act the only provisions are sections 82, 83 and 84. Section 82 deals with competency to make a complaint and section 83 lays down the procedure to be followed. Section 84 provides for appeals against the orders and decisions of the Labour Court. So in all other matters the provision of the Code of Criminal Procedure apply by virtue of section 5 (2) thereof. Under Schedule II of the Criminal Procedure Code which would apply to this Act the offences under this Act will be bailable, not compoundable, and as none of the offences is punishable with an imprisonment exceeding six months, they will be triable as summons cases. So under section 248 of the Code the complaint can be withdrawn with the permission of the Court. Also the complaints would be dismissed for default under section 247 of the Code. In short the offences under this Act would be bailable, not compoundable, not cognisable, triable as a summons case and triable as a summary trial in which an appeal lies.

Powers and procedure of Labour Courts in trials.

83. In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, of a Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence shall follow the procedure laid down in Chapter XXII of the said Code for a summary trial in which an appeal lies; and the rest of the provisions of the said code shall, so far as may be, apply to such trial.

V of 1898

Appeals.

84. (1) Notwithstanding anything contained in section 83 an appeal shall lie to the Industrial Court—

(a) against a decision of a Labour Court in respect of a matter falling under clause (a) or (c) of paragraph A of sub-section (1) of section 78, except to the extent to which it determines whether a strike or lockout was illegal or not, or a decision of such Court under paragraph C of sub-section (1) of the said section;

(b) against a conviction by a Labour Court by the person convicted;

(c) against an acquittal by a Labour Court in its special jurisdiction, by the Provincial Government;

(d) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the Provincial Government.

(2) Every appeal shall be made within thirty days from the date of the decision, conviction, acquittal or sentence, as the case may be:

Provided that the Industrial Court may for sufficient reasons allow an appeal after the expiry of the said period.

Special Jurisdiction:-

Under the bill as originally drafted the jurisdiction of a Labour Court to try offences was termed special jurisdiction, but later on this nomenclature was dropped. The words 'special jurisdiction' seems to have remained in clauses (c) and (d) of sub-section (1) of this section through inadvertence. The words 'special jurisdiction' therefore mean criminal jurisdiction.

Industrial Court to exercise superintendence over Labour Courts.

85. The Industrial Court shall have superintendence over all Labour Courts and may—

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts;

(d) settle a table of fees payable for process issued by a

Labour Court or the Industrial Court.

Decision, etc., of Labour Court not to be called in question.

86. Except as otherwise provided by this Act, no decision, award or order of a Labour Court shall be called in question in any proceeding in any civil or criminal Court.

CHAPTER XIII.

Court of Industrial Arbitration.

87. It shall be the duty of the Industrial Court—

Duties of Industrial Court.

(a) (i) to decide appeals under section 20 or 44 from orders passed by the Registrar;

(ii) to decide appeals from the decision of the Comissioner of Labour under section 36 and 39 and revision applications under section 37 regarding standing orders;

(iii) to decide disputes referred to it under sub-section (6) of section 58;

(iv) to decide all matters which may be referred to it by a Conciliator or a Board under Section 61 or by an arbitrator under section 69;

(v) to decide industrial disputes referred to it in accordance with submissions registered under section 66 which provide for such reference to the Industrial Court;

(vi) to decide industrial disputes referred to it under section 71, 72 or 73;

(vii) to decide matters referred to it under section 90;

(viii) to decide questions relating to the interpretation of this Act or rules made thereunder and standing orders referred to it under section 91;

(ix) to decide references made to it under section 99;

(x) to decide such other matters as may be referred to it under this Act or the rules made thereunder;

(b) to decide appeals made under section 84 from a decision of a Labour Court.

Legislative changes :-

This section corresponds to section 53 of the Bombay Industrial Disputes Act and there have been substantial alterations, additions and ommissions.

Under this Act the Industrial Court is the Supreme Court of appeal, revision and reference and arbitration in matters covered by the Act. The original work it performed under the Bombay Industrial Disputes Act by way

of hearing and desposing of applications for declaring whether a strike, change or lock-out is illegal or not, have now been transferred to the Labour Courts.

Under the Bombay Industrial Act the offences under the Act were tried and punished by the ordinary criminal Courts and the appeals and revisions lay under the Criminal Procedure Code to the superior criminal courts. Under this Act the Labour Court tries the offences under the Act and appeal lies to the Industrial Court. Under section 89 (2) the Industrial Court has all the powers of the High Court of Bombay under the Code of Criminal Procedure in respect of offences punishable under the Act.

Powers of Industrial Court.

88. (1) The Industrial Court in appeal may confirm, modify, add to or rescind any decision or order appealed against and may pass such orders therein as it may deem fit.

(2) In respect of offences punishable under this Act, the Industrial Court shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898.

V of 1898

(3) A copy of the orders passed by the Industrial Court shall be sent to the Labour Court.

Cancellation of registration of union.

89. If in any proceeding the Industrial Court finds that any union was registered by reason of a mistake, misrepresentation or fraud, or that a registered union has contravened any of the provisions of this Act, the Industrial Court may direct that the registration of such union shall be cancelled.

Legislative changes :-

This section corresponds to section 54 of the Bombay Industrial Disputes Act.

Reference on point of law.

90. (1) A civil or criminal Court may refer any matter or any issue in any suit, criminal prosecution or other legal proceeding before it relating to an industrial dispute to the Industrial Court for its decision. Any order passed by such Court in such suit, prosecution or legal proceeding shall be in accordance with such decision.

(2) The Provincial Government may refer to the Industrial Court any point of law arising in any proceedings held under this Act. The Industrial Court shall not decide any such reference save in open Court and with the concurrence of a majority of the members of the Court present at the hearing of the reference.

Legislative Change:-

This section corresponds to section 56 of the Bombay Industrial Disputes Act. Under that Act only Civil Courts could refer any matter or issue to the

Industrial Court. Under this Act a Criminal Court is also empowered to refer an industrial dispute to the Industrial Court for its decision. Sub-section (2) is new.

Reference regarding interpretation of Act and Rules.

91. The Commissioner of Labour may refer any question relating to the interpretation of this Act or the rules made under this Act to the Industrial Court for its decision.

This section is new and empowers the Commissioner of Labour to make a reference regarding the interpretation of the Act and rules to the Industrial Court.

Procedure before Industrial Court.

92. (1) The Industrial Court shall make regulations consistent with the provisions of this Act and the rules made thereunder regulating its procedure

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for the formation of Benches consisting of one or more of its members and the exercise by each such Bench of the jurisdiction and powers vested in it :

Provided that no Bench shall consist only of a member who has not been, and at the time of his appointment was not eligible for appointment as, a Judge of a High Court.

(3) Every regulation made under sub-section (1) or (2) shall be published in the *Official Gazette*.

(4) Every proceeding before the Industrial Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code.

XLV of 1860.

(5) The Industrial Court shall have power to direct by whom the whole or any part of the costs of any proceeding before it shall be paid:

Provided that no such costs shall be directed to be paid for the services of any legal adviser engaged by any party.

This section may be read with advantage along with section 10. Read together these two sections give a clear picture of the composition and procedure of the Industrial Court.

Under section 24 of the Bombay Industrial Disputes Act, the Industrial Court was to consist of two or more members. It was contended that when the third member was absent, the Industrial Court was not competent to hear applications as a Full Bench. The Court held that so long as there are two members of the Industrial Court including the President, the Court is properly constituted. Even though there may be three members of the Court it is not necessary that the Full Bench must always consist of all three members when

reference is made by one member sitting singly.[1]

Execution of order as to costs.

93. An order made by the Industrial Court regarding the costs of a proceeding may be produced before the Court of the Civil Judge within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within the local limits of the ordinary civil jurisdiction of the High Court before the Court of Small Causes of Bombay, and such Court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

This section corresponds to section 58 of the Bombay Industrial Disputes Act. For the words "Principal Court of original Jurisdiction" the words "the Court of the Civil Judge" has been substituted in this Act.

Parties on whom order of Industrial Court binding.

94. An order, decision or award of the Industrial Court shall be binding on—

(a) all parties to the industrial dispute who appeared or were represented before it;

(b) all parties who were summoned to appear as parties to the dispute whether they appeared or not, unless the Industrial Court is of opinion that they were improperly made parties;

(c) in the case of an employer who is a party to the proceeding before such Court in respect of the undertaking to which the dispute relates, his successors, heirs or assigns in respect of the undertaking to which the dispute relates; and

(d) in the case of a registered union which is a party to the proceeding before such Court, all persons represented by the union at the date of the award, as well as thereafter.

Legislative Changes :-

This section corresponds to section 59 of the Bombay Industrial Disputes Act. A very important change is made in sub-clause (d). Under the Bombay Industrial Disputes Act the order, decision or award of the Industrial Court was binding upon "all persons who were members of the union on the date of

1. The Gopal Mills Co. Ltd. Vs. The Government Labour Officer, Ahmedabad. Appn. No. 4/1944. Bombay Labour Gazette. (June 1945) Vol. 24. Page 626.

dispute or who became members of the union thereafter," and under this section it has been made binding on "all persons represented by the union at the date of the awards as well as thereafter." It may further be noted that the persons who are bound under clause (d) are "all persons represented by the union at the date of *award*." There are no such words 'as decision or order' in this sub-clause. It seems to be an inadvertent mistake. The words should be "at the date of award, decision or order." Section 115 also makes decision and orders of the Industrial Court as well as a Labour Court binding.

Order of Industrial Court not liable to appeal or review.

95. No order, decision or award of the Industrial Court shall be called in question in any civil or criminal Court.

High court's power to interfere with the decision of the industrial court:-

The High Court of Bombay has held that if the Industrial Court had acted without jurisdiction or in excess of the legal authority, the High Court would have the power to interfere with its decision by the issue of a writ of certiorari in spite of section 60 of the Bombay Industrial Disputes Act (corresponding to section 95 of the present Act). But if the Industrial Court has power to decide a question it cannot be said to have acted without jurisdiction or in excess of its jurisdiction merely because it has decided wrongly.[1] Thus where the Industrial Court decides that the non-payment of dearness allowance to night shift workers in contravention of the terms of an award amounted to an illegal change, an application for a writ of certiorari was made to the Bombay High Court. The High Court held that it was not a question of jurisdiction. "The Industrial Court had jurisdiction to decide whether the change was an illegal one. If the Industrial Court had decided that the operatives were not entitled to the dearness allowance and non-payment thereof did not amount to an illegal change, it could not be contended that it had exercised a jurisdiction not vested in it by law or had acted in excess of jurisdiction. The position is not altered merely because it decided otherwise and held that the change was illegal. Assuming the contention of the mills to be correct, all that can be said is that the Industrial Court having power to decide that question has decided it wrongly. But that would not be an illegal exercise of jurisdiction or a decision in excess of its jurisdiction."[2]

Officer to appear in proceeding before Industrial Court.

96. The Provincial Government may direct any officer to appear in any proceeding before the Industrial Court by giving notice to such Court and on such notice being given such officer shall be entitled to appear in such proceeding.

---

1. The Kalyan Mills Co. Ltd. Vs. Government Labour Officer at Ahmedabad. Civil Appl. No. 1019 of 1941. Bombay Labour Gazette (March, 1944) Vol. 23. Page 453. Per High Court of Bombay.
2. Ibid.

CHAPTER. XIV.

Illegal Strikes and Lock-outs.

Illegal strikes.

97. (1) A strike shall be illegal if it is commenced or continued—

(a) in cases where it relates to an industrial matter specified in Schedule III or regulated by any standing order for the time being in force;

(b) without giving notice in accordance with the provisions of section 42 ;

(c) only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change ;

(d) in cases where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 54 is received by the Conciliator for the industry concerned for the local area ;

(e) in cases where conciliation proceedings in regard to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings ;

(f) in cases where a special intimation has been sent under sub-section (2) of section 52 to the Conciliator, before the receipt of the intimation by the person to whom it is to be given ;

(g) in cases where a submission relating to such dispute or such type of disputes is registered under section 66, before such submission is lawfully revoked ;

(h) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sub-section (6) of section 58 or under section 71, or of the Industrial Court under section 72 or 73, before the date on which the arbitration proceedings are completed, or the date on which the

award of the Labour or Industrial Court, as the case may be, comes into operation, whichever is later ;

(i) in contravention of the terms of a registered agreement, or a settlement or award.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceeding.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days notice of a strike not falling under clause (a), (g), (h), or (i) of sub-section (1) was given to the employer and the Labour Officer, and the strike was not commenced either before the expiry of the period of notice or after six weeks from the date of its expiry, the employees who resume work within forty-eight hours of a Labour Court or the Industrial Court declaring such strike to be illegal shall incur no penalty under this Act in respect of such strike:

Provided that nothing in sub-section (3) shall apply to any strike which has within the period of notice been declared under section 99 to be illegal.

Legislative changes :

This section corresponds to section 62 of the Bombay Industrial Disputes Act. The clauses (a) and (f) of sub-section (1) are new. The other clauses are substantially the same. Sub-section (3) is new.

STRIKE :-

Strike has been defined in section 3 (36) of the Act. It is not every cessation of work that is a strike under the Act. A cessation of work would be a strike only if it comes under the definition of 'strike'. Nor is every strike illegal. Only those strikes which are commenced or continued in circumstances specified in sub-sections (1) and (2) of section 97 would be illegal. Therefore in order to prove that a strike was an illegal one it must be proved that the cessation of work was a strike within the meaning of the definition of the term in section 3 (36) and also that it was commenced or continued under any of the circumstances specified in sub-sections (1) and (2) of section 97.

Under the definition as given in section 3 (36) "strike" means "a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of the employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute"

Ingredients of an illegal strike :

Therefore in order to prove an illegal strike it has to be proved that (i) there was a total or partial cessation of work by the employees in an industry or refusal to continue to work or to accept work, (ii) the cessation of work must be by the employees acting in combination or the refusal to continue to work or accept work must be concerted or under a common understanding of employees, (iii) such cessation or refusal is in consequence of an industrial dispute as defined in section 3 (17) and (iv) the strike was commenced or continued under any of the circumstances specified in sub-sections (1) and (2) of Section 97.

In order to hold an employee to be guilty of continuing or commencing an illegal strike every one of these ingredients must be proved.

Partial or total cessation.

The cessation of work even for a short time would amount to a strike if it is connected with an industrial matter.[1]

Where the workers stopped the work and approached the authorities to represent their case during working hours, held that it amounted to a strike within the meaning of this definition. If the workers had any grievance they could have represented their case to the management or the Government Labour Officer after the working hours instead of stopping work during working hours.[2]

The expressions "partial cessation of work" and "concerted refusal to continue to work" must mean refusal by the employees to do work in accordance with the hours fixed for work or in accordance with the custom or usage of the industry. Where the hours fixed for first relay were 7 A. M. to 11 A. M. and from 12 noon to 5 P. M. and for the second relay from 7 A. M. to 12-30 P. M. and from 1-30 P. M. to 5 P. M., all the workers stopped work between 11 A. M. to 1 P. M; held that the concerted refusal to work in accordance with the hours fixed amounted to a strike within the meaning of the definition.[3]

The mills increased the daily hours of work from 9 to 10 as they were legally entitled to and fixed the time from 7 A. M. to 6 P. M. with recess from 12 noon to 1 P. M. The old hours of work were 7-30 A. M. to 5-30 P. M. One hundred and one workers resented this increase of hours and on the day the new arrangement came into force they came to work at 7-30 A. M. and went out in a body at 5-30 P. M. i. e. according to old timings instead of working up to 6 P. M; it was held that this was partial cessation of work by the employees acting in combination and the cessation of work was in consequence of an industrial dispute. For the dispute being as regards question of hours of work, which is an industrial matter it was an industrial dispute and therefore the

1. Mahadev Vishnu and others. Vs. The Victoria Mills. Co. Ltd. No. 2. Application No. 23/1943. Bombay Labour Gazette. (Nov. 1943) Vol. 23. Page 197.

2. The Raghuvanshi Mills. Ltd. Vs. The Government Labour Officer, Appn. No. 9/1942. (July. 1942) Vol. 21. Page 1122.

3. The Sarangpur Cotton Manufacturing Co. Ltd. Vs. The Government Labour Officer, Ahmedabad. Appns. No. 28/1942 and 29/1942. Bom. Labour Gazette. (August. 1942) Vol. 21. Page 1189.

action of the workers amounted to a strike and as no notice of change was given by the workers it amounted to an illegal change.[1]

Where the employees refused to work in the 10th hour of the shift on 2nd May of 1945 and for several days thereafter, their demand being the reduction of hours of work from 10 to 9, held that the strike was illegal, as no notice of change was given.[2]

The operatives in the grey and colour winding department stopped creeling work contending that it was not part of their legitimate work and they were not bound to do. Held that the stoppage of creeling work amounted to an illegal strike.

If the opponents thought that creeling was not part of their work it was not open to them to stop that work. The only course open to them was to resort to conciliation proceedings.[3]

A concerted refused to work, by refusing to go to work at all would amount to a strike. It is not necessary that in order that there may be a cessation of work, the work ought to be started and stopped. If the employees do not attend the mill and thereby bring about the stoppage of work, they would be bringing about cessation of work.[4]

Under a common understanding

It is necessary that the cessation of work must be by the employees acting in combination or that their refusal to work was concerted under a common understanding.

In the under-noted case the workers had admittedly struck work, but it was contended that there was no concerted action on their part and therefore the cessation of work did not amount to a strike. The principal witness for the workers stated that he himself stopped the work in protest and the other workers followed without any concerted action on their part. The court held, "It is impossible to believe that each one of the workers stopped work one after the other without any concerted action on their part. Admittedly the stoppage of work was meant as a protest and there could not have been almost simultaneous stoppage of work unless the workers had resolved through their leader that they must stop the work on that morning. Therefore the stoppage was due to concerted action on the part of the opponent employees."[5]

1. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Textile Labour Association Ahmedabad. Appns. No. 4/1941. and 8/1941. Bombay Labour Gazette. (April. 1941) Vol. 20. Page 629.

2. The Kamla Mills. Ltd. Vs. The Government Labour Officer and others. Appn. No. 61/1945. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 598.

3. The Gopal Mills. Co. Ltd. Vs. The Government Labour Officer, Ahmedabad. Appn. No. 3/1945. Bombay Labour Gazette. (Jan. 1946) Vol. 25. Page 334.

4 The Ahmedabad Kaiser-I-Hind Mills. Co. Ltd. Vs. The Textile Labour Association, Ahmedabad. Appn. 71/1945. Bombay Labour Gazette. (Feb. 1946) Vol. 25. Page 426.

5. The Swadeshi Mills. Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 57/1941. Bombay Labour Gazette. (Dec. 1941) Vol. 20. Page 382.

Similarly when 221 workers struck work for an increase in wages it was contended that the cessation of work was not concerted and there was no prior concertation among them. The Court over-ruled the contention holding that it was not likely that that the idea of downing the tools came spontaneously to each of the 221 employees independently and at the same time.[1]

Where about 200 workers left the mills at the close of a meeting, held that this could not have been the case unless there was a concerted action, because of the dissatisfaction that the workers were not likely to get their demand of 2 annas as dearness allowance.[2]

Where out of 3500 workers about 200 workers wanted that the muslim workers should not be employed, while the rest were in favour of amicably settling between them and the muslim workers and the workers did not go on work for two days as they were holding discussions regarding allowing the muslim workers to work and also through fear that the 200 workers who were against muslim employees working in the mills might create a scene, held that though there was a cessation of work, it was not due to the common understanding of hindu workers except a comperatively small group of about 200 workers and it therefore did not come within the definition of strike.

"There is no doubt that about 200 workers were trying to force the remaining workers not to allow the muslims to work but there is no evidence to show who they were and no declaration can be granted in the absence of their names being ascertained."[3]

Where Such Cessation or Refusal is in Consequence of an Industrial Dispute :

In order that cessation of work may amount to 'strike' it must be in consequence of an industrial dispute. If it could reasonably be attributed to other reasons it would not be a strike within the meaning of the definition of the term.[4]

The employees of the mill company demanded a holiday on 4th December as they wanted to celebrate the same as a 'Foundation Day'. The mills company refused the demand and kept the mills working on that day. None the less the employees of the spinning department struck work on the 4th. Thereupon the mills company applied to declare it to be an illegal strike. Held that it was not a 'strike'. The Court said, "The cessation of work on the 4th was directly traceable to their (employees') desire to observe 4th December as Foundation Day as requested by them originally. If the preliminary request on part of the workers and the refusal on the part of the applicants had not

1. The Ruby Mills. Ltd. Vs The Government Labour Officer and others. Appn. No. 228/1943. Bombay Labour Gazette. (April. 1944) Vol. 23. Page 503.

2. The Raja Bahadur Motilal Poona Mills. Ltd. Vs. Mohamed Sharif and others. Appn. No. 29/1941. Bombay Labour Gazette. (Jnne. 1941) Vol. 20. Page 822.

3. The Bombay Dyeing and Manufacturing Co. Ltd Vs. The Government Labour Officer and others. Appn. No. 64/1946. Bombay Government Gazette. Part I (6th March. 1947.) Page 814.

4. The Manekchowk and Ahmedabad Manufacturing Co. Ltd. No. 1. Vs. The Textile Labour Association and others. Appns. No. 2/1941 and 3/1941. Bombay Labour Gazette. (April. 1941) Vol. 20. Page 626.

been there and the workers had absented from work on the 4th December, for the purpose of observing the Foundation Day, it could hardly have been contended that the cessation of work was in consequence of an industrial dispute: and I cannot see why a polite request on the part of workers and the regretted inability on the part of the applicants, to grant it, should make any difference. The essence of the matter is whether the cessation of the work was *in consequence* of an industrial dispute. If it could be reasonably attributed to other cause it would not be a strike within the meaning of section 3 (35) of the Act (corresponding to section 3 (35) of the present Act.) In the present case the cessation of work on 4th December can in my opinion be reasonably attributed to the expressed desire of the workers to observe that day as the Foundation Day. It cannot necessarily be regarded as a cessation of work in consequence of an industrial dispute. That being so it cannot be regarded as a strike".[1]

Also where the workers absented themselves to take part in the municipal elections held that the reason for refusing to work viz., "because they wanted to take part in the municipal election" was not an industrial matter and therefore it did not amount to a strike within the definition of the term.[2]

The indispensable condition of a strike is that cessation of work must not only relate to an industrial dispute but must be in consequence of such dispute. This was very ably explained in the judgment of the Industrial Court in the following case: The workers demanded a holiday on 26th January 1944 for observing 'Independence Day'. The mills did not grant the holiday. Nonethe-less the workers did not turn up for work. In the application of the mills for declaring it to be an illegal strike, the court observed, "In order that cessation of work must amount to strike, such cessation must not only relate to an industrial dispute, but must be in consequence of such dispute. When the workers wished to observe a particular day as a holiday on some ground or other and refused to turn up on that particular day it cannot be said that the cessation of work was in consequence of an industrial dispute. Supposing the workers demanded increase in wages or reinstatement of a dismissed worker and stopped working on their demand being not conceded this would clearly be a strike because the refusal of the demand was the direct cause of cessation of work which was therefore in consequence of an industrial dispute. But where the workers in a body demand a holiday for any purpose not connected with an industrial dispute or intimate their desire to the employers and state further that they will not attend on that day even if the holiday was not granted, it can hardly be said that their cessation of work is in consequence of their demand being turned down. It is only an adherence to their already expressed desire to have a holiday and is not the direct result of a refusal to grant a holidy"[3]

1. The Manekchowk and Ahmedabad Manufacturing Co. Ltd. No. 1. Vs. The Textile Labour Association, Ahmedabad. Appn. No. 31/1941 Bombay Labour Gazette. (April. 1941) Vol. 20. Page 626.

2. The Pratap Spinning Weaving and Manufacturing Co. Ltd, Vs. The Amalner Girni Kamgar Union. Appn. No. 27/1942. Bombay Labour Gazette. (Dec. 1942) Vol. 22 Page 252.

3. The Gopal Mills, Co. Ltd. Vs. The Government Labour Officer Ahmedabad and others. Appn. No. 4/1944. Bombay Labour Gazette (June. 1945) Vol. 24. Page 626.

It was held in the following cases that there was no strike where certain workers remained absent on a particular working day even though the authorities had refused to grant holiday on that day,[1] or where certain non-muslim workers absented themselven on 'Oras' day even though their request for a holiday was turned down,[2] or certain workers absented themselves on the second day of Ramzan Id.[3]

However the Industrial Court held the cessation of work to be an illegal strike in the under-noted case where the employees struck work as they wanted rest on the 4th March immediately after the two holidays for Holi on 2nd and 3rd which were fixed at their own desire.[4]

So also when the mills lawfully converted the 15th which was normally a working day into a holiday and kept the mills open on the 17th, a Sunday, a scheduled holiday, but the operatives remained absent contending that they were entitled to remain absent on 17th, held that it was an illegal strike.[5]

Absence from work without assigning reasons :

If the workers in a body stay away from working on any day without giving reasons for doing so and it cannot be proved that such abstention was due to any industrial dispute it would not come under the definition of strike because such abstention was not in consequence of an industrial dispute. The words "in consequence of an industrial dispute" were advisedly put in the definition. "If the workers stay away from work for any reason not connected with an industrial dispute, they do so at their own risk of losing a day's wages and bring themselves within the possibility of discharge from employment; but they cannot be punished for resorting to an illegal strike. They cannot be dismissed for misconduct because under the standing orders, going on strike is not a misconduct, unless it is against the provisions of the Act."[6]

But in another decision the court held that the cessation of work must be presumed to be in consequence of an industrial dispute.

"If the workers did resort to cessation of work, the management would not be in a position to say as to whether it was in consequence of an industrial dispute unless the workers tell the management the reason for going on strike.

1. The Ahmedabad Sarangpur Mills. Co. Ltd. Vs. The Textile Labour Association. Ahmedabad. Appn. No. 34/1944. Bombay Labour Gazette. (Dec. 1945) Vo 25. Page 267.

2. The Ahmedabad Kaiser-I-Hind Mills. Co. Ltd. Vs The Textile Labour Association Ahmedabad. Appn. No. 36/1944 Bombay Labour Gazette. (Dec. 1945) Vol 25 Page 268.

3. The Ahmedabad. Kaiser-I-Hind Mills Co. Ltd. Vs. The Textile Labour Association Ahmedabad. Appn. No. 109/1944. Bombay Labour Gazette (Dec 1945) Vol. 25. Page 272.

4. The Khandesh Spinning and Weaving Co. Ltd. Vs. The Government Labour officer. Jalgaon. and others. Appn. No. 23/1942 Bombay Labour Gazette. (July. 1942) Vol. 21. Page 1127.

5. The Ahmedabad Kaiser-I-Hind Mills. Co. Ltd. Appn. No. 71/1945 Bombay Labour Gazette. (Feb. 1946) Vol 25. Page 426.

6. The Gopal Mills. Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 4/1944. Bombay Labour Gazette. (June 1945) Vol. 24 Page 626.

Where therefore the cessation of work is admitted but the management is not told the reasons for doing so it would be impossible for the management to prove the reasons for doing so; it would be indeed impossible for the management to prove that the cessation was in consequence of an industrial dispute. In such cases it would be for the workers to prove that though there was cessation of work it was not in consequence of an industrial dispute dut for some other reason.

If therefore the workers admit that they ceased doing work but did not prove for what reasons they did so, the burden does not lie upon the management to prove that the strike was resorted to in respect of an industrial matter; but the burden of proving that it was not a strike on the ground that it was not resorted to in consequence of an industrial dispute, lies upon the workers. If the burden of proof were on the management in such circumstances it would be quite easy for workers to resort to cessation of work even though their grievance related to an industrial matter without disclosing that reason to the management or anybody else and thereby prevent that cessation of work from being a strike as defined by the Act. I think therefore, that where total or partial cessation of work is admitted, as it is in the present case, the burden of proof that it was not in respect of an industrial matter lies on the workers and unless that burden is discharged the cessation or refusal would be presumed to be in consequence of an industrial dispute and thus amount to a strike".[1]

This decision seems to be in conflict with the decision in application No.4/1944. Moreover if the strike is to be for enforcing a demand one cannot understand why the demand should be concealed. It must be disclosed to the employer in one or another way if they want it to be granted.

Industrial dispute :

But if the cessation of work is in consequence of an industrial dispute it amounts to strike. Industrial dispute is defined in section 3 (17) as any dispute between an employer and employees which is connected with an industrial matter. Industrial matter is defined in sub-section (18) of section 3 as any matter relating to employment, work, wages, hours of work, privileges, rights, duties of employers or employees or the mode, terms and conditions of employment.

For reinstatement :

Where the workers struck work as a protest against the discontinuance of the old weaving master and the appointment of a new weaving master, held the dispute was an industrial dispute and the cessation of work amounted to a strike.[2]

1. Shanti Shripat and others Vs. The Ambika Silk Mills. Co. Ltd. Appn. No. 22/1943. Bombay Labour Gazette. (Nov. 1943) Vol. 23, Page 195.

2. The New China Mills. Ltd. Vs. The Government Labour Officer and others. Appn. No. 14/1940. Bombay Labour Gazette. (Sept. 1940) Vol. 20. Page 50.

Also in the following cases where work was struck on account of the discharge of two head jobbers,[1] on account of the dismissal of a head jobber,[2] for the reinstatement of a head jobber who was dismissed,[3] or as a protest against the discharge of two workers,[4] or for reinstatement of a discharged worker[5] or reinstatement of a dismissed worker.[6] or on account of the suspension of a jobber.[7] it was held in each case that it amounted to a strike and as no notice of change was given under section 28 (2) of the Bombay Industrial Disputes Act, each of them was an illegal strike. Under this Act employment, unemployment and reinstatement fall under Schedule III item (6) and therefore a strike in respect of them is totally prohibited under section 97 (1) (a) and each of the above strikes would be illegal under section 97 (1) (a). The proper procedure would be to apply to the Labour Courts for redress of grievances in these matters.

So also where the cessation of work for compelling the removal of the assistant spinning master[8] or for removal of a watchman who had given a push to a worker[9] it was held to be a strike and as no notice of change was given, it was held to be an illegal strike.

Wages :

Wages are an industrial matter under the definition of the term, under section 3 (18) and therefore if the work is stopped for an increase in wages, it is in consequence of an industrial dispute and therefore the cessation of work would amount to strkie.[10]

1. New Prallad Mills. Ltd. Vs. Employees of the Mills. Appn. No. 64/1940. Bombay Labour Gazette. (Feb. 1941) Vol. 20. Page 420.

2. The Victoria Mills. Co. Ltd. Vs The Government Labour. Officer and others. Bombay Labour Gazette. Appn. No. 26/1941. (May 1941) Vol. 20. Page 704.

3. The Bradbury Mills. Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 60/1943 Bombay Labour Gazette. (Aug. 1943) Vol. 22. Page 831.

4. The Khandesh Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer. Appn. No. 48/1941. Bombay Labour Gazette. (Sept. 1941) Vol. 21. Page 52.

5. The Niranjan Mills. Ltd. Vs. The Government Labour Officer. Ahmedabad and others. Appn. No. 78/1943. Bombay Labour Gazette. (Dec. 1943) Vol. 23. Page 273.

The Standard Mills. Co. Ltd. Vs. The Government Labour Officer. Bombay and others. Appn. No. 1/1942 Bombay Labour Gazette. (March. 1942) Vol. 21. Page 723.

The Bombay Dyeing and Manufacturing Co. Ltd. Vs. The Government Labour Officer. Appn. No. 44/1946. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 864.

6. The Jam Manufacturing Co. Ltd. Vs. The Government Labour Officer Bombay and others. Appn. No. 33/1944. Bombay Labour Gazette. (July. 1944) Vol. 23. Page 711.

7. The Raghuvanshi Mills. Co. Ltd. Vs. The Government Labour Officer. Bombay. Appn. No. 7/1942. Bombay Labour Gazette. (July. 1942) Vol. 21. Page 1122.

8. The Hindustan Spinning and Weaving Mills. Co. Ltd. Vs. The Government Labour Officer. Bombay and others. Appn. No. 103/1945. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 600.

9. The Seksaria Cotton Mills. Ltd. Vs. The Government Labour Officer. Bombay. Appn. No. 37/1946. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 861.

10. Hattersley Mills. Vs. The Government Labour Officer. Bombay and others. Appn. No. 53/1941 Bombay Labour Gazette. (Dec. 1941) Vol. 21. Page 380.

The Dhunraj Mills. Ltd. Vs. The Government Labour Officer and others. Appn. No. 42/1942. Bombay Labour Gazette. (Jan. 1943) Vol. 22. Page 327.

Similarly cessation of work on the ground of low wages would amount to strike.[1]

" Where the workers demanded that they should be paid on scale weights and not on nominal weights as was the practice, and struck work in a body when that demand was not granted, held that it amounted to a strike, for it was in connection with an industrial matter.[2]

In each of these cases as no notice of change was given, every one of the strikes was held to be illegal. The workers of the applicant mills intimated to the Government Labour Officer to take steps for an increase in their wages. Employees heard nothing from the Government Labour Officer for two months and therefore out of exasperation at the delay of that Officer they struck work. Held, the strike was in respect of an industrial matter viz. grievance about low wages. " It is not correct to say that in as much as the immediate grievance was about the delay by the Labour Officer in taking steps under the Act, the grievance about low wages was a remote and not proximate cause for the strike". Therefore the cessation of work was held to be a strike and as no notice was given, it was held to be an illegal one.[3]

The weavers of the applicant mills did not accept the pay tickets on the ground that their wages were low and came out from the weaving shed in a body and stopped work for two and half hours until Labour Officer persuaded them to resume work; held that the strike was an illegal one as no notice was given under section 28 (2).

Where in accordance with list of pay-days fixed under standing order no. 8, the unclaimed wages were payable each Thursday but the employees did not draw their unclaimed wages on a Thursday, the day fixed for payment of unclaimed wages but on the following Friday demanded the unclaimed wages. The mills refused to accede to that demand and therefore the employees struck work. Held that under standing order No. 8 they were entitled to the payment of unclaimed wages on Thursday and if they wanted payment on any other day that would constitute change in an industrial matter in as much as the payment of unclaimed wages was a matter relating to wages and therefore would fall under the definition of industrial matter. According to the workes even though under the standing order the management was bound to give unclaimed wages on Thursday they wanted their unclaimed wages, in this particular case. on a day other than the day fixed by the management in their

1. The Kamla Mills. Ltd. Vs. The Government Labour Officer and others. Appn. No. 20/1942. Bombay Labour Gazette. (July. 1942) Vol. 21. Page 1126.

The Kamla Mills. Ltd. Vs. The Government Labour Office Bombay. Appn. No. 132/45. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 606.

2. The Laxmi Cotton Manufacturing Co. Ltd. Vs. The Government Labour Officer. Sholapur. Appn. No. 10/1940. Bombay Labour Gazette. (Sept. 1940) Page 457.

3. The Swadeshi Mills. Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 57/1941. Bombay Labour Gazette. (Dec. 1941) Vol. 21. Page 382.

The Moon Mills. Ltd. Vs. The Government Labour Officer, Bombay and others. Appn. No. 119/1944. Bombay Labour Gazette. (Jan. 1945) Vol. 24. Page 290.

2. The New Pralhad Mills. Ltd. Vs. The employees in the weaving department. Appn. No. 1/1941. Bombay Labour Gazette. (Feb. 1941) Vol. 20. Page 421.

discretion. That being so the workers' demand would not constitute a request for a change in the standing order as such but it would none the less amount to asking for a change in an industrial matter. That being so a notice was necessary under section 28 (2) of the Bombay Industrial Disputes Act, and as no notice was given the strike was held to be illegal.[1]

Under this Act the strike would be illegal under section 97 (1) (a) being in respect of a matter regulated by the standing orders.

Dearness Allowance :

Cessation of work for dearness allowance amounts to strike and if no notice of change is given it is illegal.[2]

The strike for dearness allowance would be illegal if it is resorted to before the completion of conciliation proceedings[3] but the strike within two months after the completion of the concilaition proceedings would be perfectly legal.[4]

Bonus :

Cessation of work in pursuance of a demand for bonus which the management refused to grant is in consequence of an industrial dispute and amounts to strike.[5] So also where the employees struck work demanding bonus in one instalment instead of in two instalments as previously announced, held the demand related to an industrial matter and the cessation of work was a strike.[6]

In all these cases the strike was resorted to without giving notice as required by section 62 (1) (b) (corresponding to section 97 (1) (b) of the present Act) and therefore all of them were held to be illegal.

For Hours of Work :

The question of hours of work is an industrial matter and dispute about hours of work is an industrial dispute within the meaning of the term. Thus where the management increased the hours of work from 9 to 10 (which they

1. The Mill Owners' Association Bombay Vs. The Government Labour Officer and others. Appn. No. 5/1940. Bombay Labour Gazette. (April. 1940) Vol. 19. Page 693.

2. The Kumla Mills Ltd. Vs. The Government Labour Officer. Appn. No. 41/1944. Bombay Labour Gazette. (Aug. 1944) Vol. 23. Page 759.

Government Labour Officer and others. Appn. No. 9,1943. Bombay Labour Gazette. (Aug. 1943) Vol. 22. Page 827.

3. The Raja Bahadur Motilal Poona Mills. Ltd. Vs. Muhamad Sharif and others. Appn. No. 29/1941. Bombay Labour Gazette. (June. 1941) Vol. 20. Page 822.

4. The Raja Bahadur Motilal Poona Mills. Ltd. Vs. The Dattu Balvant Gokule. Appn. No. 31/1941. Bombay Labour Gazette. (June. 1941) Vol. 20. Page 827.

5. The Seksaria Cotton Mills. Ltd. Vs. The Government Labour Officer and others. Appn. 10/1942 Bombay Labour Gazette. (July. 1942) Vol. 21. Page 1123.

The New Keiser-I-Hind Spinning and Weaving and Manufacturing Mills Ltd. Vs. The Government Labour Officer and others. Appn. No. 25/1942. Bombay Labour Gazette. (July. 1942) Vol. 21. Page 1129.

6. The Swadeshi Mills. Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 6/1943. Bombay Labour Gazette (April. 1943) Vol. 22. Page 527.

were legally entitled to) and fixed the time of work from 7 A. M. to 6 P. M. instead of from 7-30 A. M. to 5-30 P. M., some workers came up at 7-30 A. M. as usual and left work at 5-30 P. M. instead of working up to 6 P. M., held that the dispute was an industrial dispute as it related to hours of work which is an industrial matter. Also admittedly there was partial cessation of work and the cessation of work was in consequence of an industrial dispute and therefore the action of the workers did amount to strike as defined in the Act and as no notice of change was given, it was illegal under section 62 (1) (b) of the Bombay Industrial Disputes Act [present section 97 (1) (b)].[1]

So also where the workers went on strike as a protest against the increase of the hours of work from 9 to 10 (which the management was empowered by a Government notification) even though the management agreed to reduce the hours of work. Held that the employees resorted to strike without giving a notice of change and therefore their action amounted to an illegal strike.[2]

Even if the management is not entitled to increase the hours of work, yet the strike would be illegal for the action of the management would constitute. an illegal change and the strike only on the ground of an illegal change by an employer is illegal.[3]

So also where the workers stopped the working of relay system according to which the hours of first relay were 7 A. M. to 11 A. M. and from 12 to 5 P. M. and for second relay from 7 A. M. to 11-30 A. M. and 1-30 P. M. to 5 P. M.; held that concerted refusal to work according to the hours fixed amounted to "strike" within the meaning of the definition of the word. Similarly there was rightly or wrongly rationalisation of work in that department for two hours when half the number of employees attended to the working of the whole department. Concerted refusal to act up to this custom or usage of the industry would also amount to a 'strike' and if the employees wanted a change a notice of change under section 28 (2) of the Bombay Industrial Disputes Act [the present s. 42 (2)] must be given.[4]

Work :

Where the demand was that all the Badlis should be given work held that the demand was an industrial matter and cessation of work in consequence

1. The Textile Labour Association, Ahmedabad. Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appn. No. 4/1941 and 8/1941. Bombay Labour Gazette. (April. 1941) Vol. 20. Page 629.

Mahadev Vishnu Vs. The Victoria Mills. Ltd. Appns. No. 23/1943. Bombay Labour Gazette. (Nov. 1943) Vol. 23. Page 197.

2. The Century Spinning and Manufacturing Co. Ltd. Vs. The Government Labour Officer and others. Appn. No 59/1941 Bombay Labour Gazette. ('Jan.' 1942) Vol. 21. Page 519.

3. S. 97 (1) (e).

Jivansing Bhagvansing and others Vs. The Broach Fine Counts Spinning and Weaving Co. Ltd. Appn. No. 39/1942. Bombay Labour Gazette. (March. 1943) Vol. 22. Page 451.

4. The Sarangpur Cotton manufacturing Co. Ltd. No. 2. Vs. The Government Labour Officer, Ahmedabad. Appn. No. 28/1942. Bombay Labour Gazette. (August. 1942) Vol. 21. Page 1189.

The Ahmedabad Laxmi Cotton Mills. Co. Ltd. Vs. Gulam Hussain Gulamnabu and others. Appn. No. 29/1942. Bombay Labour Gazette. (Aug. 1942) Vol. 21. Page 1192.

of the management not granting it amounted to a strike and as no notice of change was given it was an illegal strike.'[1]

Where the employees in the weaving department refused to work unless 30 single loom permanent weavers who were transferred to looms in pairs as a result of break-down of a weaving shed motor were given a guarantee that they will be provided with work daily, without giving notice, held the strike was illegal.[2]

Where the industrial dispute was that the weavers refused to work as a protest so long as the spinning department was not working, held that the strike was in respect of an industrial matter and was resorted to without giving any notice of change, was illegal.[3]

Refusal to give name of informants :—

Where the workers went on strike because the management refused to give the names of person who informed them of the intention of the workers to go on a strike, held that the refusal to give the names of such persons was an industrial matter and the strike was in consequence of an industrial dispute.[4]

Privilege :

Where the mills company supplied food grains to its employees at cheap rates the workers had grievances as regards the distribution of food stuff and therefore they resorted to strike without giving notice. Held that distribution of food stuff was a privilege enjoyed by the operatives and came within the definition of industrial matter. "It is also a matter pertaining to the relationship between the employees and employers within the meaning of the sub-section because it is as the employees of the mills that they would be entitled to the privilege of getting cheap food stuffs from the grain shop opened by the employer and therefore the cessation of work amounted to a strike."[5]

Strike under a misapprehension.

Where a strike is illegal, the fact that it was due to a misapprehension or misconception of the workers does not cure the illegality. Thus where the workers who went on a strike were under a misapprehension that they were entitled to, as increments of 1½ anna, whereas the mills had rightly offered an increment of 1 anna, held that the strike was illegal in as much as even if there

1. The Laxmi Cotton Manufacturing Co. Ltd. Vs. The Government Labour Officer and others. Appns. No. 10/1940 and 11/1940. Bombay Labour Gazette. (Sept. 1940) Vol. 20. Page 45.

2. The Simplex Mills. Co. Ltd. Vs. The Government Labour Officer. Appn. No. 34/1946. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 860.

3. The Jam Manufacturing Co. Ltd. No. 1, Vs. The Government Labour Officer. Bombay Appn. No. 17/1946. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 862.

4. David Mills. Co. Ltd. Vs. The Government Labour Officer. Bombay and others. Appn. No. 42/1946. Bombay Government Gazette. Part. I (6th March. 1947) Page. 812.

5. Standard Mills. Co. Ltd. Bombay Vs. The Government Labour Officer, Bombay and others. Appn. No. 7/1943. Bombay Labour Gazette. (April. 1943) Vol. 22. Page 528.

The Tata Mills, Ltd. Vs. The Government Labour Officer and other. Appn. No. 58/1943. (Aug. 1943) Vol. 22. Page 831.

was misconception in the minds of the workers that did not relieve them of of the obligation to give a notice of change if they wanted to go on strike."[1]

One of the reasons for strike, an industrial matter.

If the strike is resorted to for two reasons one of which relates to an industrial matter, the whole strike must be regarded as illegal if it is resorted to without giving a notice of change with respect to the industrial matter.[2]

Conduct and not the view :

"If an employee has struck work, then he cannot be heard to say that he was against the strike. For it is true that some, out of the workers might not have been in favour of the strike, but the question has to be determined not with reference to what their view of the strike was but with reference to their actual conduct. If this agreement on behalf of the employee was to prevail, every one of the workers might come and say that he himself was against the strike but that he refrained from coming to work, because other persons were striking work."[3]

Strike commenced or continued under one of the circumstances specified in sub-sections (1) and (2) of section 97 :

Finally it must be proved that the strike was commenced or continued under one of the circumstances specified in sub-section (1) and (2) of section 97.

Section 97 (1) (a).

This sub-section absolutely prohibits strike in respect of an industrial matter specified in Schedule III or regulated by a standing order. In such matter the remedy of the employees is to apply to the Labour Court and seek redress there. But they cannot go on strike for redress of their grievances in respect of these matters and if they do, they would be guilty of illegal strike and be punished therefor. The workers' right to resort to strike remains only in respect of industrial matters not specified in Schedule I or III and that too after the notice of change has been given and the conciliation proceedings have been completed.

Section 97 (1) (b) : Notice of change.

Section 97 (1) (b) provides that a strike commenced or continued without giving a notice in accordance with the provisions of section 42 is illegal. Section 42 (2) which deals with the notice of change to be given by an employee desiring a change, lays down that notice must be given in respect of a change in industrial matters not specified in Schedule I and III. If the change desired is in respect of an industrial matter *not covered* by Schedule I and III,

1. The Tata Mills Ltd. Vs. The Government Labour Officer and others. Appn. 97/1944. Bombay Labour Gazette. (Jan. 1945) Vol. 24. Page 287.
2. The Standard Mills Co. Ltd. Vs. The Government Labour Officer Bombay. Appn No 7/1943. Bombay Labour Gazette. (April 1943) Vol. 22. Page 528.
3. Chudaji Ramji Waghmare Vs. The Tata Mills Co. Ltd. Appn. No. 148/1943. Bombay Labour Gazette. (Jan. 1944) Vol. 23. Page 318.

the notice of change is compulsory and a strike without giving such notice is illegal. If the matter falls under Schedule I or III no notice of change is necessary. So a strike in respect of such industrial matter would not be illegal under this sub-clause but would be illegal under sub-clause (a). For, sub-clause I ½ (a) makes illegal strikes in respect of an industrial matter covered by Schedule III or falling under Schedule I, which is regulated by standing orders. Under the Bombay Industrial Disputes Act, notice of change was compulsory by an employee in respect of every industrial matter, and therefore a strike was illegal when no notice of change was given.[1] Under this Act in addition to finding that a particular cessation of work is a strike it is to be determined whether the industrial matter to which it relates comes under Schedule I or III or does not come under either of them. If it falls under Schedule III or is regulated by standing orders the strike is illegal under Section 98 (1) (a). If it does not fall under Schedule I and III then the strike is illegal if no notice of change is given.

Notice may have been given either by employees or employer:-

Once conciliation proceedings begun at the instance either of the employer or the employees, come to an end, it would be open for either of the parties to act either by going on strike or declaring a lock-out as the case may be on fulfilling the conditions laid down for it. If the employees start the conciliation proceedings it is not necessary for the employer to give a notice of change in the same proceedings and if the employer starts the proceedings it is not necessary for the employees to give a separate notice of their own will to the same subject matter if they want to go on strike. "Thus where it was continued that the lock-out was illegal as the notice of change was given by the employees and conciliation proceedings were initiated at their instance and not at the instance of the employer; held it was not necessary that the employer should have given a notice of change."[2]

But it has also been held, "Under the scheme of the Bombay Industrial Disputes Act it is clear that after the completion of the conciliation proceeding it is open to the workers to resort to a strike and it is also open to the employers to declare a lock-out within two months after the completion of such proceedings. It is therefore clear that just as the employees were justified in resorting to a strike after the completion of conciliation proceedings the employers were also justified in deciding a lock-out".[3]

But in earlier case it was held that the workers cannot take advantage of the fact that the employer had given a notice of change as regards the proposed change. The notice contemplated in section 62 (1) (b) of the Bombay Industrial Disputes Act is the notice to be given by the workers who want to

1. The New China Mills Ltd. Vs. The Government Labour Officer and others. Appn. No. 14/1940. Bombay Labour Gazette. (Sept. 1940) Vol. 20. Page 50.

2. The Amalner Girni Kamgar Union Vs. The Pratap Spg., Wvg., & Mfg. Co. Ltd. Appn. No. 131/1945. Bombay Labour Gazette (Sept. 1946) Vol. 26. Page 33.

3. Pandurang Hari Vs. New City of Bombay Manufacturing Co. Ltd. Appn No. 110/1945. Bombay Labour Gazette, (April. 1946) Vol. 25. Page 601.

go on a strike[1].

This decision which is in conflict with the two decisions noted above does not seem to be correct.

The notice of change must be given by the workers who go on a strike. A notice given by employees of the other concern of the same employer cannot be deemed to be notice given by them. Thus where Sir Shapurji Bharucha Mills Co. Ltd. owned a woollen mill and two cotton mills, the employees of the cotton mills gave a notice of change for dearness allowance pursuant to which conciliation proceedings were taken and completed. Thereafter the employees of the woollen mills went to strike for dearness allowance, without giving a notice of change; held that conciliation proceedings related to the dearness allowance to be given to the workers in the cotton mills and the fact that there was the same owner of the two mills does not make any difference and therefore the strike was illegal.[2]

A letter written but not in the form of the notice within the meaning of section 28 of the Bombay Industrial Disputes Act is not a statutory notice and therefore where only such a letter was written by some workers the strike was held to be illegal.[3]

The workers elected their representative for giving a notice of change for increase of wages, but before further proceedings were taken they resorted to strike. Held that the strike was illegal.[4]

Notice of change :

Notice of change must be given and the conciliation proceedings must be completed **before** the strike is commenced. Thus where after the strike on the ground of low wage rates was called off the notice of change was given and the conciliation proceedings were initiated: held that that does not make the strike legal.[5]

Section 97 (1) (c) :-

Section 62 (1) (c) of the Bombay Industrial Disputes Act (corresponding to Section 97 (1) (c) of the present Act) lays down that a strike shall be illegal if it is commenced or continued only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change.

To increase the number of working hours a day without a legal notice would normally amount to an illegal change. Therefore it is clear that what

1. The Tata Mills Ltd. Vs. The Government Labour Officer, Bombay. Application No. 117/1944 Bombay Labour Gazette. (Jan. 1945) Vol. 24. Page 288.

2. The Sir Shapurji Bharucha Mills Ltd. Vs. The Government Labour Officer. Appn. No. 6/1940, Bombay Labour Gezette. (April 1940) Vol. 19. Page. 695.

3. The Indian Manufacturing Co. Ltd. Vs. The Govt. Labour Officer and others. Appn. No. 26/1942 Bombay Labour Gazette. (Sept. 1942) Vol. 22. Page 47.

4 The Dhunraj Mills. Ltd. Vs. The Government Labour Officer. Appn No. 49/1941. Bombay Labour Gazette (Sept 1941) Vol. 21. Page 54.

5. The Seksaria Cotton Mills. Ltd. Vs. The Government Labour Officer and others. Application No. 10/1946. Bombay Labour Gazette. (April 1946) Vol. 25 Page 594.

section 62 (1) (c) of the Bombay Industrial Disputes Act enacts is that a strike is illegal if it is commenced or continued only for the reason that the employer has increased the number of working hours a day without notice.[1]

In the above noted case the mills increased the hours of work for 9 to 10. The applicants refused to work for more than 9 hours. Held that the cessation of work was an illegal strike even if the act of management amounted to illegal change.

Where the workers struck work as a protest against the order of the management to attach strings to their looms for measuring yards produced by each weaver, held that the strike was illegal. If the workers were dissatisfied with that order it was open to them to apply for an illegal change by the management but were not justified in refusing to work on their looms because they were dissatisfied with the orders of the management.[2]

The employees stopped relay system. Held that even though the employees may not be bound to work the relay system, it was not open to them to stop that work and the only course available to them was to resort to conciliation proceeding; and if they failed to apply to the Industrial Court, that action of the employees amounted to an illegal strike.[3]

The opponent operatives went on a strike because they wanted to have more cleaning time for their machines. It was contended that there was an agreement for giving more time for cleaning the machines. Held that the strike was illegal. For if there was an agreement, then the management had continued a 'breach of that agreement' by not complying with it and thereby committed an illegal change; but the workers could not go on strike which they could do only after going through the formalities of the Act. If there was no agreement, they cannot go on strike without giving a notice.[4]

There was a practice in the opponent's mills that when an employee was absent another employee probably his neighbour was asked to mind two sides. The workers went on a strike as a protest against working the double, denying the practice. The Court held that assuming that the practice is not proved, it amounted at most to an illegal change. But that did not relieve the workers from giving a notice of change. Section 62 (1) (c) (corresponding to section 97 (1) (c) of this Act) provides that a strike is illegal, if it is commenced or continued only for the reason that the employer has committed an illegal change. The proper remedy for workers was to give a notice of change. The court held that the practice was proved and the strike without giving a

1. Jivansing Bhagvansing and others Vs. The Broach Fine Counts Spinning and Weaving Co. Ltd. Appn. No. 39/1942. Bom. Labour Gezette (March 1943) Vol. 22. Page 451.

2. The Appollo Mills. Ltd. Vs. The Government Labour Officer and others. Appn. No. 8/1942. Bombay Labour Gazette (July 1942) Vol. 21. Page 1121.

2. The Gopal Mills. Co. Ltd. Vs. The Government Labour Officer. Ahmedabad. Appn. No. 16/1945 Bombay Labour Gazette. (March. 1946.) Vol. 25. Page 513.

4. The Standard Mills Co. Ltd. Vs. The Government Labour Officer. Appn. No. 25/1941. Bombay Labour Gazette. (May. 1941) Vol. 20. Page 705.

notice of change was illegal.[1]

Section 97 (1) (e) :

Strike before the completion of conciliation proceedings would be illegal.[2]

Completion of conciliation proceedings :

Conciliation proceedings regarding the industrial dispute about the demand of workers for increase in wage rates etc., began on 23rd February 1946. On 22nd April 1946 they ended in failure. On 23rd April the workers resorted to a strike, before publication of the report of the conciliation in the Government Gazette. The mills contended that the strike was illegal as the conciliation proceedings can be deemed to be completed under section 42 of the Bombay Industrial Disputes Act (corresponding to section 63 of this Act), when the report of the conciliator is published and therefore as it was commenced before the publication of the conciliator's report, it commenced before the completion of conciliation proceedings and therefore was illegal. Held that the section 42 of the Bombay Industrial Disputes Act, among other things, provides that the conciliation proceedings must be deemed to be completed when the time-limit fixed for completion of the conciliation proceedings under section 41 (present section 62) has expired and section 41 provides the maximum period of two months for completion of the conciliation proceedings provided the time is not extended by the Provincial Government or by mutual consent and therefore there being no extention of time by Provincial Government or by mutual consent, the conciliation proceedings were completed at the end of two months i. e. on 22nd April even though the report of the conciliator was not published and therefore the strike on 23rd April after the conciliation proceedings completed was legal.[3]

Section 97, Sub-section (2) :

A strike commenced within two months of the completion of conciliation proceedings is perfectly legal, provided it is in respect of the demand which was the subject matter of conciliation proceedings.[4]

But if the strike is for getting demands other than those which formed the subject matter of conciliation proceedings it is illegal. The burden of proving that the strike becomes illegal because of the fresh demands of which no notice was given as required by law is on the applicant mills.[5]

On 15th December 1937 under section 28 (2) of the Bombay Industrial Disputes Act the Textile Labour Association as a representative union gave a

1. The Indian Maufacturing Co. Ltd. Vs. The Government Labour Officer. Appn. No. 46/1946. Bombay Government Gazette. Part. I. (26th December. 1946) Page 3751.

2. The Raja Bahadur Motilal Poona Mills, Ltd. Vs. Mohamad Sharif : Appn. No. 29/1941. Bombay Labour Gazette. (June. 1941) Vol. 20. Page 822.

3. The Edward Textiles Ltd. Appn. No. 43/1946. Bombay Labour Gazette. (Aug. 1946) Vol. 25. Page 931.

4. Raja Bahadur Motilal Poona Mills. Ltd. Vs. Dattu Balvant Gokhle and others, Appn. No. 36/1941. Bombay Labour Gazette. (June 1941) Vol. 20. Page 827.

5. Ibid.

notice of change to the Ahmedabad Mill Owners' Association demanding "a change in the scale of wages so as to neutralise completely the rise in the cost of living."

As no agreement was arrived at, a second notice dated 22nd December 1937 in form M under section 34 of the Act was given which prescribed *inter alia* a method of bringing about such neutralisation. On account of the second notice conciliation proceeding started on 22nd December and terminated on 2nd February 1940. On 10th February the report of the Special Conciliator was published in Bombay Government Gazette. Under section 42 of the Bombay Industrial Disputes Act, the proceedings would be deemed to be terminated on 10th February. In the meanwhile on the 16th January 1940 another Union, the Mill Kamdar Union alleging to be on behalf of textile workers of Ahmedabad sent a letter to the President of the Ahmedabad Mill Owners' Association asking for an immediate wage increase of 40 per cent. On 28th of January and 9th of February the Mill Kamdar Union issued leaflets asking the workers to go on strike if their demand of an immediate 40 per cent. rise in wages was not acceded to. On the 12th, most of the employees of 8 mills referred to in the application went on strike. Thereupon the Ahmedabad Mill Owners' Association filed an application for declaration of illegal strike against the Textile Labour Association and the Mill Kamdar Union and some of the workers of the 8 mills.

On these facts the Court held that it was not proved that the employees had resorted to strike for demand of 40 per cent. rise in their wages. For there was no evidence that the operatives who went on strike were members of the Mill Kamdar Union or they had authorised the same union to act as their agent or that the letter addressed by the Union was authorised by them.

The applicants contended that the demand in the second notice would mean a rise of 24 per cent. in wages and therefore the subject matter of the conciliation proceedings was the demand for 24 per cent. rise and it was argued that any demand for different percentage of rise or new extent of relief cannot be regarded as forming part of the demand in conciliation proceedings and must be deemend a fresh demand; and that the strike being for a rise of 40 per cent. in wages was for a fresh demand and therefore was illegal.

The Court over-ruled the contention and held that even assuming that the strike was in pursuance of a demand for 40 per cent. rise in wages as contended. The question before the Conciliator was not really the exact percentage demanded by way of rise in wages but what change was necessary in the wages to neutralise the effect of the rise in cost of living. That being so the demand for 40 per cent. rise was substantially included in the subject matter of the conciliation proceedings and as the employees were represented in these proceedings and the strike having been resorted to after the completion of the conciliation proceedings was legal.[1]

1. The Ahmedabad Mill owners' Association, Vs. The Mill Kamdar Union, Ahmedabad and others. Appn. No. 3/1940. Bombay Labour Gazette (April. 1940) Vol. 19. Page 686.

Time for filing the application for illegal strike :

The workers went on a strike and after resumption of work, the very same industrial dispute was referred to for conciliation and while the conciliation proceedings were pending the mill company filed an application for a declaration that the strike was illegal, five months after the strike was over and three months after the conciliation proceedings started. The court observed, "The filing of the application during the pendency of the conciliation proceedings would be prejudicial to the workers and it is very much desirable that no such application should be made when the dispute is before the conciliator after resumption of work. Otherwise the workers might regard it as a threat for enforcing conciliation. It is also desirable that though there is no time limit for filing such application, they should be filed immediately after strike has commenced or in any case soon after the strike is over."[1]

Effect of the assurance of the employer :

Where an assurance was given by the management that if the employees who had gone on strike were to resume work, the application filed by the mills for alleged illegal strike would be withdrawn and where the employees acting on the assurance called off the strike, held that the application was not tenable and therefore was dismissed.[2]

But the same learned Judge in application No. 219/1943 held that even if an understanding was given by the manager of the mills that he would not proceed against the workers under the Bombay Industrial Disputes Act in case they went back to work, it cannot alter the merits of the case. Hence the action of the workers amounted to an illegal strike.[3]

Resumption of work after an illegal strike :

If the workers resort to a strike which is illegal, then even if they willingly resume work immediately on the advice of the Government Labour Officer to do so, the strike remains an illegal strike.[4]

Sub-section 3 :

This sub-section is new and provides *locus penitentiæ* to those workers who after 14 clear days notice go on a strike not falling under clauses (a), (e), (g) and (h) of sub-section (1) of section 97 and who resume work within 48 hours of the decision of a Labour Court or the Industrial Court declaring such strike to be illegal ; such workers shall incur no penalty.

---

1. The Acme Thread Co. Ltd. Vs. The Government Labour Officer. Appn. No 47/1946. Bombay Govt. Gazette. Part. I. (24th Oct. 1946) Page 3166.

2. The Broach Fine Counts Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer, Ahmedabad and others. Appn. No. 20/1943, Bombay Labour Gazette. (Sept. 1943) Vol. 23. Page 25.

3. The Broach Fine Counts Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 219/1943 Bombay Labour Gazette. (March. 1945) Vol. 24, Page 410.

4. The Moon Mills. Ltd. Vs. The Government Labour Officer, Bombay and others, Appn. No. 119/1944. Bombay Govt. Gazette. (Jan. 1945) Vol. 24. Page 290.

Illegal lock-outs.

98. (1) A lock-out shall be illegal if it is commenced or continued—

(a) in cases where it relates to any industrial matter specified in Schedule III or regulated by any standing order for the time being in force;

(b) without giving notice in accordance with the provisions of section 42;

(c) in cases where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 54 is received by the Conciliator for the industry concerned for the local area;

(d) in cases where conciliation proceedings in respect of an industrial dispute to which a lock-out relates have commenced, before the completion of such proceedings;

(e) in cases where a special intimation has been sent under sub-section (2) of section 52 to the Conciliator, before the receipt of the intimation by the person to whom it is to be given;

(f) in cases where a submission relating to such dispute or such type of disputes is registered under section 66, before such submission is lawfully revoked;

(g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sub-section (6) if section 58 or under section 71, or of the Industrial Court under section 72 or 73, before the date on which the arbitration proceeding is completed or the date on which the award of the Industrial Court comes into operation, whichever is later;

(h) in contravention of the terms of a registered agreement, or settlement or award.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a lock-out relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months from the completion of such proceeding.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days' notice of a lock-out not falling under clause

(a), (f), (g) or (h) of sub-section (1) was given to the employees and the Labour Officer, and the lock-out was not commenced either before the expiry of the period of notice or after six weeks from the date of its expiry and the employer discontinues the lock-out within forty-eight hours of a Labour Court or the Industrial Court declaring such lock-out to be illegal, the employer shall incur no penalty under this Act in respect of such lock-out :

Provided that nothing in this sub-section shall apply to any lock-out which has within the period of notice been declared under section 99 to be illegal.

Section 98 : Legislative Changes :

This section corresponds to section 63 of the Bombay Industrial Disputes Act. Sub-clause (1) (a) is completely new. Sub-clauses (b[1]), (c[1]) and (d) of sub-section (1) are the same as sub-clauses (b[1]), (c) and (d) of section 63 of the Bombay Industrial Disputes Act. Sub-clause (e) is new. Sub-clauses (f), (g) and (h) corresponds to (e), (ee) and (f) of section 63 (1) of the Bombay Industrial Disputes Act, respectively. Sub-section (2) of this section is similar to sub-section (2) of section 63 of that Act. Sub-section (3) is new.

Lock-out : Illegal lock-out : Penalty :

Section 3 (24) defines a 'lock-out'. This section specifies the circumstances in which a lock-out is illegal and section 102 prescribes the penalty for declaring an illegal lock-out.

Illegal lock-out :

From the definition of the term 'lock-out' and from the perusal of this section it is clear that to prove an illegal lock-out, the following four things must be proved:—

(1) There was closing of a place or part of a place of employment, by the employer or total or partial suspension of work by an employer or the total or partial refusal to employ persons employed by him.

(2) Such closing, suspension or refusal occurs in consequence of an industrial dispute ; and

(3) such closing, suspension or refusal in intended for the purpose of—

(a) compelling any of the employees, directly affected by such closing, suspension or refusal or any other employees of his, or

(b) aiding any other employer in compelling persons employed by him to accept any term or condition of or affecting employment; and

(4) the lock-out was commenced or continued under one of the circumstances specified in sub-sections (1) and (2) of section 98.

For the purpose of compelling the employees etc. :

Unless the exclusion of the employees has been intended for the purpose of compelling them to accept any condition of employment, the action of mill authorities would not amount to a lock-out. Thus where the mills legally increased the hours of work from 9 to 10 but some 101 workers came and left according to old timings the management refused them admission on the next day.

The mills contended that they dismissed those workers in consequence of the strike. They were not prepared to take them even if they accepted new conditions of employment. The refusal to take them therefore was not for the purpose of compelling them to accept a term of employment and was not therefore a lock-out. The contention was upheld and it was held that the action of the mill did not amount to a lock-out. But as the dismissal was without following the procedure prescribed under standing orders, it was held to be an illegal change.[1]

In this case it was argued on behalf of the employees that the action of the mills would indirectly compel other workers to accept the new conditions of the employment. The court held that although that *may be* the effect, it would not be a lock-out as defined in the Bombay Industrial Disputes Act. For, under that Act the refusal to employ must be with a view to compel those *very persons* to accept a condition of employment. The law is now changed and under this Act a refusal to employ a person employed by him with the intention of compelling even other employees to accept any conditions of employment comes within the definition of a lock-out. Query; Would the refusal to employ in the above case be a lock-out under this Act ?

Under the definition of lock-out it must be intended for the purpose of compelling a worker to accept any term of employment. Thus the workers struck work for a few days for the removal of the spinning master, of-course after the conciliation proceedings terminated in failure, but after a few days they called off the strike and resumed work. The management refused work to certain ring leaders. Held that the management wanted to punish the leaders rather than to compel the workers to accept any term affecting employment. The applicants (workers), when they called off the strike and offered themselves for work along with other workers, it must be taken, unless it is proved to the contrary, that they had given up their demand and there would therefore be no question of compelling them to accept any term of employment. The refusal to employ them did not therefore amount to lock-out.[2]

Under the scheme of the Bombay Industrial Disputes Act, after the completion of the conciliation proceedings it is open to the workers to resort to a strike and it is also open to the employers to declare a lock-out within

1. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 4/1941. Bombay Labour Gazette. (April. 1941) Vol. 29. Page 629.

2. Pandurang Hari Vs. The New City of Bombay Manufacturing Co. Ltd. Appn. No. 110/1945. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 601.

two months after the completion of such proceedings. Therefore just as the employees would be justified in resorting to a strike after the completion of the conciliation proceedings, the employers would also be justified in declaring a lock-out.[1]

Closing of a place of employment :

The workers went on a strike after the failure of the conciliation proceedings. The management issued a notice that if the workers do not resume work within three days i. e. by the morning of 28th November 1945, they will be refused employment. The workers resumed work on 28th. In an application to declare the action of the mills to be an illegal lock-out, it was held that a lock-out is defined as closing of place of employment or the total or partial refusal by the employer to continue to employ the persons employed by him. A lock-out does not take place on the day on which the intention to declare a lock-out on a future date is given. It begins on the day when there is either the closing of place or suspension of work or refusal to employ. As the employees had themselves come on the day on which the lock-out had to take place and none of them was prevented from working; held that there was no lock-out. Also the condition that the workers should resume work within three days was not illegal. It was really an option given to the worker and not a threat.[2]

Reference to Industrial Court for declaration whether strike or lock-out is illegal.

99. (1) Provincial Government may make a reference to the Industrial Court for a declaration whether any proposed strike or lock-out of which a notice has been given would or would not be legal.

(2) No declaration shall be made under this section save in open Court.

This section is new and is intended to prevent illegal strikes and lock-outs by obtaining the decision of the Industrial Court on the legality or otherwise of a proposed strike or lock-out of which notice has been given

1. Ibid.
2. The Amalner Girni Kamgar Union Vs. The Pratap Spg. and Wvg. and Manufacturing Co. Ltd Appn. No. 131/1945, Bombay Labour Gazette, (Sept 1946) Vol. 26, Page 33.

CHAPTER XV.

Courts of Enquiry.

Court of Enquiry: constitution, duties and powers of—

100. (1) The Provincial Government may constitute one or more Courts of Enquiry consisting of such number of persons as the Provincial Government may think fit.

(2) A Court of Enquiry shall inquire into such industrial matters, as may be referred to it by the Provincial Government, including any matter pertaining to conditions of work or relations between employers and employees in any industry, and any aspect of any industrial dispute.

(3) Every proceeding before a Court of Enquiry shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code. XLV of 1860

This section is completely new.

"Provision is also made to enable Government to set up a Court of Enquiry, when this procedure is considered appropriate in a particular situation or dispute in an industry."[1]

1. Statement of Objects and Reasons.

CHAPTER XVI.

Penalties.

This Chapter deals with the offences under the Act. Under the Bombay Industrial Disputes Act, the offences under the Act were tried by the ordinary criminal Courts But under this Act, a Labour Court tries these offences. Appeals and revisions against the decisions of the Labour Courts would lie to the Industrial Court.

Employer not to dismiss, reduce or punish an employee.

101. (1) No employer shall dismiss, discharge or reduce any employee or punish him in any other manner by reason of the circumstance that the employee—

(a) is an officer or member of a registered union or a union which has applied for being registered under this Act; or

(b) is entitled to the benefit of a registered agreement or a settlement, submission or award; or

(c) has appeared or intends to appear as a witness in, or has given any evidence or intends to give evidence in a proceeding under this Act; or

(d) is an officer or member of an organisation the object of which is to secure better industrial conditions; or

(e) is an officer or member of an organisation which is not declared unlawful; or

(f) is a representative of employees; or

(g) has gone on or joined a strike which has not been held by a Labour Court or the Industrial Court to be illegal under the provisions of this Act.

(2) No employer shall prevent any employee from returning to work after a strike, arising out of an industrial dispute relating to any matter specified in Schedule I, II or III, which has not been held by a Labour Court or the Industrial Court to be illegal unless—

(i) the employer has offered to refer the issues on which the employee has struck work to arbitration under this Act, and the employee has refused arbitration; or

(ii) the employee not having refused arbitration, has failed to offer to resume work within one month of a declara-

tion by the Provincial Government that the strike has ended.

(3) Whoever contravenes the provisions of sub-section (1) or (2) shall, on conviction, be punishable with fine which may extend to Rs. 5,000.

(4) The Court trying an offence under this section may direct that out of the fine recovered, such amount as it deems fit shall be paid to the employee concerned as compensation.

(5) In any prosecution under this section the burden of proving that the dismissal, discharge, reduction or punishment of an employee by an employer was not in contravention of the provisions of this section shall lie on the employer.

Legislative changes :

This section corresponds to section 64 of the Bombay Industrial Disputes Act with important changes. Sub-section (2) and (5) are new.

Under sub-section (1) the word "discharge" is added. In sub-clause 1 (b) the word "settlement" is added. In Sub-clause 1 (g) the words "which has not been held by a Labour Court or the Industrial Court to be illegal" have been substituted for the words "which is not illegal" appearing in sub-clause (1) (g) of section 64 of the Bombay Industrial Disputes Act. The penalty has been increased from Rs. 1000/- to Rs. 5000/-.

Discharge :

The word "discharge" has been added in sub-section (1). In the corresponding section of the Bombay Industrial Disputes Act it did not find place. But even under that Act it was held that a discharge may be a punishment and therefore if an employee is discharged by reason of any of the circumstances mentioned in section 64 (1), it would come under the words "punish him in any other manner".[1] The word 'discharge' has now been added to put the matter beyond any doubt whatsoever.

Punish in any other manner :

Even such petty acts as placing a day-worker continuously on the night-shift or transferring an operative on daily wages from a sixty inch loom to a forty inch loom so as to reduce his daily earnings may amount to punishment. Hence the wide expression "punish him in any other manner" is purposely used in section 64 (1) of the Act (corresponding to section 101 (1) of this Act) to cover all such cases where an employee is intended to be penalised. That section is evidently intended to correspond to section 8 (4) of the National Labour Relations Act 1935 of the U. S. A. which penalises such acts as

1. Mafatlal Gagalbhai and another Vs. The Imperator, Criminal Appeal No. 536/1944. Bombay High Court Judgment.

"unfair labour practice," and says, "It shall be an unfair labour practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act". (Vide Ludwig Teller's Law governing Labour Disputes and Collective Bargaining, Vol. III. Page. 1788).

This shows that the real test is wilful discrimination and the same is intended by the use of the wide expression, "punish him in any manner" in section 64 (1) of the Bombay Indistrial Disputes Act (corresponding to section 101 of this Act.)[1]

Real reason for discharge etc. can be proved :

Though the avowed reason for the discharge of a worker may not fall within any of the seven clauses of section 64 (1) of the Act (corresponding to section 101 (1) of this Act), it is open to the employee to show that it was not the real reason of his discharge and that he was really discharged by reason of some circumstance mentioned in one of these clauses Thus where the reason given by the management in the discharge slip was "creating trouble" it was held that the complainant was entitled to show that, that was not the real reason and the real reason of his discharge was that "he intended to appear as a witness in a proceeding under the Act"[2]

S. 101 (1), (c) : Intends to appear as a witness :

The management applied to the Industrial Court for declaring a strike of the workers to be illegal. It was apprehended by the workers that the three operatives who were cited as opponents in the application might not probably contest the application and therefore they held meetings and passed a resolution that one Ganu and other four named workers should apply to get themselves added as opponents. The very next day Ganu and another worker named Savalram were discharged for "creating trouble". The Court held that the management must have come to know of this resolution, namely that Ganu and other four workers should apply to the Industrial Court to be joined as parties. But assuming that this was the immediate cause of their discharge, that reason does not come within clause (c) of section 64 (1) of the Act. To apply to be joined as a party does not mean to intend to be a witness or to give evidence. However the Court did not decide whether the reason fell within any other clause, since the complainant wanted to make it a test case and confine it to clause (c) only.[3]

Section 101 (1), (b):

The word "settlement" in sub-clause (b) in this sub-section has been an addition. It did not appear in the Bombay Industrial Disputes Act. So it was held that if a person is punished by reason of the circumstance that he is entitled to the benefit of a registered settlement, it did not come within the

1. Mafatlal Gagalbhai and another. Vs. The Imperaror. Criminal Appeal No. 535/1944. Bombay High Court Judgment.
2. Ibid.
3. Supra.

purview of this sub-section and was not an offence.[1]

It was a lacuna in the old Act and it has been filled up by the addition of the word "settlement" in this sub-section.

Penalty for declaring illegal lock-out.

102. Any employer who has commenced a lock-out which a Labour Court holds or the Industrial Court has declared to be illegal shall, on conviction, be punishable with fine which may extend to Rs. 2,500 and, in the case of the lock-out being continued after the lapse of forty-eight hours after it has been held or declared to be illegal, with an additional fine which may extend to Rs. 5,000 for every day during which such lock-out continues after such conviction.

Legislative changes :

This section corresponds to section 65 of the Bombay Industrial Disputes Act. The changes are that for the words "which has been held by the Industrial Court to be illegal" the words "which the Labour Court holds or the Industrial Court has declared to be illegal" have been substituted. The maximum fine for continuing the lock-out after conviction has been increased from Rs. 200 to Rs. 5,000. Also for the words. "after conviction" the words "after the lapse of forty eight hours after it has been held to be illegal" are substituted.

Penalty for declaring or commencing illegal strike.

103. Subject to the provisions of sub-section (3) of section 97, any employee who has gone on strike or who joins a strike which a Labour Court holds or the Industrial Court has declared to be illegal shall, on conviction, be punishable with fine, which may extend to Rs. 10 and, in the case of his continuing on strike after the lapse of forty-eight hours after it is held or declared to be illegal with an additional fine which may extend to Re. 1 per day for every day during which the offence continues subject to a maximum of Rs. 50.

This section corresponds to section 66 of the Bombay Industrial Disputes Act. The changes effected are that the fine has been reduced from Rs. 25 to Rs. 10. So also has the daily fine been reduced. The other change is that for the words "which has been held by the Industrial Court to be illegal", the words "which a Labour Court holds or the Industrial Court has declared to be illegal" have been substituted. This removes an ambiguity and makes it clear beyond doubt that participation in a strike which is afterwards held to be illegal comes within this section and is punishable under it. The use of the words "which has been held to be illegal" gave occasion for the contention that the strike or the lock-out must have already been held to be illegal at the time when

1. The Textile Labour Association, Ahmdabad. Vs. The Shri Ambica Mills Ltd. No. 2. Appn No. 18/1940. Bombay Labour Gazette. (Oct. 1940) Vol. 20. Page 142.

the employee goes on the strike and therefore he would not be guilty if the strike is held to be illegal *afterwards*. This contention was over-ruled and it was held that the plain meaning of the section is that participation in a strike which is afterwards to be illegal is punishable. The intention of the legislature is to penalise those employees who go on strike without resorting to the provisions of the Act.[1]

Penalty for instigating, etc., illegal strikes and lock-outs.

104. Any person who instigates or incites others to take part in, or otherwise acts in furtherence of a lock-out for which an employer is punishable under section 102 or a strike for which any employee is punishable under section 103, shall,on conviction, be punishable with imprisionment of either description for a term which may extend to three months, or with fine or with both:

Provided that no person shall be punished under this section where the Court trying the offence is of opinion that in the circumstances of the case a reasonable doubt existed at the time of the commission of the offence about the legality of the strike or lock-out, as the case may be.

Explanation I.—For the purposes of this section, a person who contributes, collects or solicits funds for the purposes of any such strike or lock-out shall be deemed to act in furtherence thereof.

Explanation II.—A person shall be deemed to have committed an offence under this section if before an illegal strike or lock-out has commenced, he has instigated or incited others to take part in, or otherwise acted in furtherance of such strike or lock-out.

This section corresponds to section 67 of the Bombay Industrial Disputes Act. The words "a strike or look-out which has been held to be illegal by the Industrial Court whether such strike or lock-out has commenced or not" have been replaced by the words "a lock-out for which any employee is punishable or a strike for which any employee is punishable under section 153." Proviso and Explanation II are new.

Penalty for disclosing confidential information.

105. If a Conciliator, a member of a Board or a Labour Officer or any person present at or concerned in any conciliation proceeding wilfully discloses any information or the contents of any dcument in contravention of the provisions of this Act, he shall, on conviction, on a complaint made by the party who gave the information or produced the document in such proceeding be punishable, with fine which may extend

1. Statement of objects and reasons. Also- Khandubhai K. Desai and others. Vs. Emperor A. I. R. 1944. Bombay 122/46 Bombay L. R. 104. (Bombay High Court.)

to Rs. 1,000.

This section reproduces verbatim section 68 of the Bombay Industrial Disputes Act.

Penalty for illegal change.

106. (1) Any employer who makes an illegal change shall, on coviction, be punishable with fine which may extend to Rs. 5000.

(2) Any employer who contravenes the provisions of section 47 shall on conviction be punishable with imprisonment which may extend to three months, or for every day on which the contravention continues with fine which may extend to Rs. 5,000, or with both.

(3) The Court convicting any person under sub-section (1) or (2) may direct such person to pay such compensation as it may determine to any employee directly and adversely affected by the change in issue.

Legislative changes :

This section corresponds to section 69 (1) of the Bombay Industrial Disputes Act. The part of section 69 (1) which provided penalty for a continuing offence is deleted and instead of that the sub-section (2) in this section is added. Sub-section (3) providing for award of compensation is new.

Penalty for contravention of a standing order

107. Any employer who acts in contravention of a standing order settled under Chapter VII shall, on conviction, be punishable with fine which may extend to Rs. 500 and in the case of a continuing contravention of such standing order, with an additional fine which may extend to Rs 125 per day for every day during which such contravention continues.

Legislative Change :

This section corresponds to section 69 (2 of the Bombay Industrial Disputes Act. The maximum fine for the first offence has been increased from Rs. 200 to Rs. 500 and for a continuing offence from Rs. 25 to Rs 125.

Penalty for obstructing person from carrying out duties.

108. Any person who wilfully refuses entry to a Labour Officer or such officer of an approved union as is authorised under section 25 to any place which he is entitled to enter, or fails to produce any document which he is required to produce, or fails to comply with any requisition or order issued to him by or under the provisions of this Act or the rules made thereunder shall, on conviction, be punishable with fine which may extend to Rs. 500.

This Section corresponds to section 70 of the Bombay Industrial Disputes Act. The words " such officer of an approved union as is authrised under section 25 " are new.

Penalties for offences not provided for elsewhere

109. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, on conviction, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to Rs. 100 and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to Rs. 200.

This section corresponds to section 71 of the Bombay Industrial Disputes Act.

Recovery of fines and compensation.

110. The amount of any fine imposed and any compensation directed by any Court to be paid under this Act shall be recoverable as arrears of land revenue.

This section is new and provides that the amount of fine and any compensation awarded by Court would be recoverable as arrears of land revenue.

CHAPTER XVII.

Record of Industrial Conditions.

Record of Industrial matters etc.

111. The Provincial Government may in respect of any industry—

(a) maintain in the prescribed manner a record of industrial matters covered by the Schedules;

(b) require any employer or employers generally to maintain and submit copies of a record in such form as may be prescribed of—

(i) data relating to plant, premises and manufacture,

(ii) other industrial transactions and dealings,

which in the opinion of the Provincial Government are likely to affect the matters specified in clause (a).

This information will prove helpful to the authorities in settling disputes and determining whether a certain change was illegal or not" (Statement of Objects and Reasons.)

The whole of this chapter is new. For the manner in which the record shall be maintained see rules.

Inquiry for verification of records.

112. (1) For the purpose of verifying the accuracy of any records maintained by an employer under the provisions of section 111, an officer authorised by the Provincial Government may, subject to the prescribed conditions hold an inquiry and may require any person to, and such person thereupon shall, produce any relevant record or document in his possession and may after reasonable notice, at any reasonable time enter any premises wherein he believes such record or document to be, and may ask any question necessary for verifying such records:

Provided that where such premises are not the usual business premises of a person, such officer shall not without the previous permission of the Provincial Government enter them under this sub-section.

(2) Any proceeding held by him for the purpose of obtaining information for such record shall be deemed to be a judicial proceeding within the meaning of section 192 of the Indian Penal Code.
XLV of 1860

For the conditions to be prescribed under section 112 (1) see Rules.

CHAPTER XVIII.

Miscellaneous.

Modifications in Schedules.

113. The Provincial Government may, by notification in the *Official Gazette*, at any time, make any additions to or alterations in the industrial matters specified in Schedule I, II or III or may delete therefrom any such matter:

Provided that before making any such addition, alteration or deletion, a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby and the Provincial Government shall consider any objection or suggestion that may be received by it from any person with respect thereto.

This section corresponds to section 72 of the Bombay Industrial Disputes Act. The words 'Schedule III' have been added.

Agreement, etc. on whom binding.

114. (1) A registered agreement, or a settlement, submission or award shall be binding upon all persons who are parties thereto:

Provided that—

(a) in the case of an employer, who is a party to such agreement, settlement, submission or award, his successors in interest, heirs or assigns in respect of the undertaking as regards which the agreement, settlement, submission or award is made, and

(b) in the case of a registered union which is a party to such agreement, settlement, submission or award, all persons who were members of such union at the date of such agreement, settlement, submission or award or who become members of the union thereafter,

shall be bound by such agreement, settlement, submission or award.

(2) In cases in which a Representative Union is a party to a registered agreement, or a settlement, submission or award, the Provincial Government may, after giving the parties affected an opportunity of being heard, by notification in the *Official Gazette*

direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification:

Provided that before giving a direction under this section the Provincial Government may, in such cases as it deems fit, make a reference to the Industrial Court for its opinion.

(3) A registered agreement entered into by the representatives of the majority of the employees affected or deemed to be affected under section 43 by a change shall bind all the employees so affected or deemed to be affected.

Legislative changes :

This section corresponds to section 76 of the Bombay Industrial Disputes Act. The change is the addition of the word 'registered' in proviso (b) of sub-clause (1) before the word 'union.' Sub-section (3) is new.

Parties to a registered agreement etc :

"When a Representative Union is a party to a registered agreement etc., all the employees in the industry who were affected by the change must be taken to be represented by the Representative Union and must be deemed to be parties within the meaning of section 76 (1) of the Bombay Industrial Disputes Act (corresponding to section 114 (1) of this Act.) The whole scheme of the Act is that in the absence of growth of sound trade unions in the Province it is considered desirable that a 25 per cent. union (15 per cent. union under this Act) would be able to protect the interests of Labour in the centre where such union exists and therefore, it can represent the employees where any contemplated change would affect the interests of employees in general. It must therefore be taken that the Textile Labour Association (a representative union) represented at the time of submission as well as at the date of the award all the employees in the Industry who were affected by the change and they must be deemed to be parties to the award".[1]

Present and future employees bound by a registered agreement etc:-

"Where a representative union is a party to an award the award would be applicable to all the persons whom that representative union represents namely all present as well as future employees in the industry affected by the change. The term "employee" as defined in the Act means any person employed in the industry for doing certain kind of work therein specified and it includes a person discharged on account of a dispute relating to to a change. It is not restricted to persons employed in the industry at any particular time

1. The Government Labour Officer, Ahmedabad Vs. The Anant Mills Co. Ltd. and others. Appn. No. 33/1941 and 42/1941. Bom. Labour Gazette (Oct. 1941) Vol. 21, Page 153.

and in our opinion, the term "employees" should therefore include any person who is engaged in the industry at any time. The term "representative of employees" in section 3 sub-section (29) (corresponding to section 30 of this Act) would thus mean representative of the employees not at any particular time but of all persons who would be included in the definition of "employees". Where, therefore, a representative union becomes a "representative of employees" it becomes a representative of employees not simply at the time of the dispute but also of all persons who may be employed in the industry thereafter and who would also be likely be affected by the change" So the night-shift workers who were employed after the award granting dearness allowance were held entitled to the benefit of the award, i. e. grant of dearness allowance.[1]

Persons entitled to the benefit of a registered agreement, etc.:

"Section 76 of the Bombay Industrial Disputes Act refers to the binding nature of an award and although there is no specific section relating to persons who are entitled to take benefit of an award it must be taken that the Legislature intended that all those persons who are to be bound by the award must be persons who are entitled to receive its benefit. Section 76 (now section 114) therefore, in our opinion would apply to persons who are bound by the award as well as to those entitled to receive its benefit."[2]

Proviso (b) applies to non-representative unions:

"The substantive provision of section 76 (1) of the Bombay Industrial Disputes Act is that an award shall be binding upon all persons who are parties thereto. Therefore where a representative union is a party to it, it will apply to all present and future members in a centre although they may not be members of any union: but where the party is a union other than a representative union, it will apply to its own members only. Then comes proviso (b) to section 76 (1) of the Bombay Industrial Disputes Act which says that in the case of a union which is a party to a submission or an award, it will bind its present as well as future members. Although this proviso speaks of any union it will, in our opinion, apply only to those registered unions which are not representatives of employees because in the case of unions which are representatives of employees the award would apply to all employees in a centre under the substantive part of section 76 (1) of the Bombay Industrial Disputes Act. All that proviso (b) means therefore is that in the case of non-representative union the award will bind not only its present but also its future members."[3]

Section 114 (2): object:

"In the case where a representative union is a party to an award,

1. The Government Labour Officer Vs. The Anant Mills Co. Ltd. Appn. No. 33/1941 and 42/1941. Bombay Labour Gazette. (Oct. 1941) Vol. 21 Page 153.
2. Ibid.
3. Ibid.

settlement etc., sub-section (2) expressly provides that in such a case the Provincial Government may, in certain cases direct that the award (also registered agreement, settlement or submission) to which it is a party shall be binding upon such other employers and employees as may be specified in the notification. This sub-section is presumably enacted for the purpose of including within the scope of the award (etc.,) not only the employees who were originally parties to the submission but all the other employers in a centre who did not join in the submission and the terms of the award may be made applicable to those other employers as well as their employees whether present or future. The intention is that if an award (submission etc.) is made between several employers and employees in a centre it should be made applicable, where a representative union is a party, to the whole of the industry in that centre. This provision is made only in the case where a representative union is a party to the award (registered agreement, settlement or submission)."[1]

A submission was filed by the Ahmedabad Mill Owners' Association and the Textile Labour Association, Ahmedabad as a representative union, by which the dispute about dearness allowance was referred to the arbitration of the Industrial Court. The Government by a notification made the said *submission* binding on the opponent mills (who were not members of the Ahmedabad Mill Owners' Association) under sub-section (2) of section 76 (corresponding to section 114 (2) of this Act). The Industrial Court gave its award but in the proceedings, the opponent mills were not represented, nor did they appear, nor were they summoned to appear. Held that the award was not binding upon the opponent mills. "For what had been made binding upon the opponents was not the award of the Industrial Court but the *submission* made by the Textile Labour Association and the Ahmedabad Mill Owners' Association in the matter of the dispute regarding dearness allowance. Under section 48, (corresponding to section 70 of this Act) the arbitrator shall, after hearing the parties concerned shall make his award which shall be signed by him. This section makes it imperative that the arbitrator, and as in the present case the Industrial Court, shall make an award after hearing the parties concerned. As in this case the opponents have not been heard, the award cannot be regarded as binding upon the opponent mills".[2]

The position would then be that the submission made binding upon the opponents still remains in force and must be heard and adjudicated upon.[3]

It was contended in the above case that before issuing notification making the submission binding upon the opponent mills the Provincial Government had given them an opportunity of being heard and therefore any award resulting from the submission would be binding upon the opponent mills. The contention was over-ruled. The Court observed, "The opportunity that was given by the Government was only, to show cause why submission should not be made

1. The Government Labour Officer Vs. The Anant Mills. Co. Ltd. Appn. No. 33/1941 and the Textile Labour Assocaition Vs. The Harivallabhdas Mulchand Mills Co. Ltd. Appn. No. 47/1941. Bombay Labour Gazette. (Oct. 41) Vol. 21. Page 153. (F. B.)

2. The Textile Labour Association, Ahmedabad. Vs. The Shri Ambica Mills Ltd. Nos. 1 and 2. Appn. No. 17/1940. Bombay Labour Gazette. (Nov. 1940) Vol. 20. Page 201.

3. Ibid.

binding upon the opponent mills. The merits of the dispute were not considered by the Government and were to be considered by us when the submission came for hearing. It is true that this section refers not only to submissions but also to agreements, settlements and award. When the disputes have already resulted in agreement, settlement or award and the Provincial Government has to consider whether they should not be made binding upon the parties who were not represented in such agreements, settlements and awards then, in such case the Provincial Government would undoubtedly have to consider the merits of the dispute and the agreement, settlement or award arising therefrom. But different considerations arise when an oportunity is given under this sub-section for showing cause why a submission should not be made binding, because in such cases the Provincial Government has not to consider the merits of the dispute, which would be considered by the arbitrator but has only to decide why matters should not be made uniform by making the submission binding on persons who are not parties to such submission. In our opinion therefore the mere fact that Provincial Government gave the opponent mills an opportunity of being heard before the submission was made binding on them does not *ipso facto* make the award binding on them unless an opportuntiy is given to them for being heard in respect of the submission which, by reason of the notification has been made binding upon them".[1]

Effect of a notification under section 114 (2) :

The effect of a notification making a submission binding upon the others is that the dispute is per force made a subject matter of arbitration in terms of the submission which was made binding upon them. In theory the submission of the dispute between the opponent mills and the Representative Union would have been the subject matter of an independent inquiry; although if notice had been issued to the opponent mills the two matters would undoubtedly have been heard together. The section, by its terms, does not make the opponent mills parties to the original submission but merely makes the submission binding upon the opponents.[2]

When the Provincial Government makes a submission binding upon certain other mills who were not members of the Mill owners' Association by a notification under sub-section (2), the effect is not that the non-member mills and their employees become parties to the original submission but that a fresh submission in terms identical with the original submission is made binding on the non-member mills and their employees. It cannot be said that the submission with regard to them was necessarily the same submission that was originally made. When a submission is made binding on the parties by a special notification the fresh submission as between the parties to it remains effective in spite of the fact that an award is made on the original submission. Therefore by virtue of the notification, a new submission is created in terms identical with original submission on which in theory, there should be an

1. The Textile Labour Association Ahmedabad. Vs. The Shri Ambica Mills Ltd. Nos. 1. and 2. Appn. No. 17/1940. Bombay Labour Gazette. (Nov. 1940) Vol. 20. Page 201.
2. Ibid.

independent award.[1]

Other employees :

The notice served on the Representative Union for being heard in respect of the notification to be issued under sub-section (2) must be deemed to be a notice to all the employees affected by the notification and the other employees mentioned in this sub-section must be deemed to be represented by the Representative Union, for the Representative Union is a representative of the employees.[2]

This decision was under the Bombay Industrial Disputes Act, but the principle of it applies under this Act with greater force. For under that Act a Representative Union could be representative of employees if some employees affectd by the change are its members. But under this Act even if none of the employees affected by the change is its member, yet the Representative Union is their representative. [Section 30 (1)]

Order or decision of Labour Court or Industrial Court on whom binding.

115. An order or decision of a Labour Court or the Industrial Court against an employer shall bind his successors in interest, heirs and assigns in respect of the undertaking as regards which it is made or given and such order or decision against a registered union shall bind all persons who were members of the union at the date of the order or decision or who become members of the union thereafter.

This section is new. It lays down on whom the decision or order of a Labour Court or the Industrial Court is binding. As far as the Industrial Court is concerned section 94 also enacts on whom the decision, order or award of the Industrial Court is binding.

Agreement, etc., when to cease to have effect.

116. (1) A registered agreement, or a settlement or award shall cease to have effect on the date specified therein or if no such date is specified therein, on the expiry of the period of two months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given in the prescribed manner by any of the parties thereto to the other party:

Provided that no such notice shall be given till the expiry of three months after the agreement, settlement or award comes into operation.

(2) Nothing in this section shall prevent the terms of a registered agreement or a settlement being changed or modified by

1. The Textile Labour Association, Ahmedabad Vs. The Shri Ambica Mills Ltd. Appn. No. 55/1943 and 56/1940. Bombay Labour Gazette. (Jan. 1941) Vol. 20. Page 351.
2. Ibid.

mutual consent of the parties affected thereby.

(3) Notwithstanding anything contained in sub-section (1) or (2), if a registered agreement, or a settlement or award provides that it shall remain in force for a period exceeding one year, it may after the expiry of one year from the date of its commencement be terminated by either party thereto giving two months' notice in the prescribed manner to the other party.

(4) The party giving notice under sub-section (1) or (3) shall send a copy of it to the Registrar and the Labour Officer of the local area concerned.

(5) If a registered agreement, or a settlement or award is terminated under sub-section (1) or (3) or if the terms of a registered agreement or a settlement are changed or modified by mutual consent, notice of such termination, change or modification shall be given by the parties concerned to the Registrar and the Labour Officer. The Registrar shall enter the notice of such termination, change or modification in a register kept for the purpose.

Explanation.—For the purposes of this section, parties who shall be competent to terminate a registered agreement, or a settlement or award, or to change or to modify the terms of a registered agreement or a settlement and who shall give notice of such termination, change or modification under sub-section (5) shall be the employer who has signed the agreement or settlement or who is a party to the award or the heirs, successors or assigns of such employer in respect of the undertaking concerned and the representative of the employees affected by the agreement, settlement or award.

Legislative changes:

This section corresponds to section 77 of the Bombay Industrial Disputes Act. The changes are that the period of notice for terminating a registered agreement etc., is reduced from six months to two months in sub-sections (1) and (3). The proviso to sub-section (1) is new. In sub-section (2) the word "settlement" is added in deference to the remarks made by the Industrial Court in the undernoted case.[1] Sub-section (5) and the explanation are new. The explanation lays down who shall be competent to give the notice of

1. In the matter of registration of the agreement dated 22-10-1943 between the Marsden Spinning and Mfg. Co. Ltd. and elected representatives of employees. Bombay Labour Gazette. (Jan. 1945) Vol. 24. Page 301.

Termination of an agreement, settlement or award :

An agreement, settlement or award would terminate on the date specified therein. If no date is specified it can be terminated by a two months' notice in writing given in the prescribed manner by one party to the other. If a registered agreement, settlement or award provides that it is to remain in force for more than one year, it may be terminated after the expiry of one year by either party giving two months' notice in the prescribed manner, but no notice for termination of agreement etc. can be given till the expiry of three months after the agreement etc. comes into operation. A copy of the notice is to be sent to the Registrar and the Labour Officer.

A registered agreement or the settlement can be modified or changed by the mutual consent between the parties.

The persons who can terminate an agreement, settlement or award, or modify or change the terms of a registered agreement or settlement are the employer who has signed the agreement or settlement or who is party to the award or the heirs and assigns of such employer and the representative of the employees affected by the agreement, settlement or award.

Section 116 (1) : Scope : Unilateral termination :

"This sub-section enables one of the parties to terminate a registered agreement, settlement or award by a notice irrespective of the willingness or consent of the other side. It is essentially a unilateral act. But there is nothing in the Act to prevent an existing agreement or settlement being modified by a subsequent agreement or settlement. In so far as the subsequent agreement or a settlement is in conflict with the earlier registered agreement, or settlement, the latter would be deemed to have been modified to that extent. Any other view would limit the freedom of contract under which parties may mutually agree to modify the terms of a former contract to which they have been parties. Such a view would be in conflict with section 77 (2) [now section 116 (2)] itself."[1]

"Sub-section (1) relates to unilateral act of the party which desires to terminate a settlement. If both parties are so desirous, the case would be governed by sub-section (2) which enables the terms of a registered agreement which might include a settlement (in this Act it does include a settlement) having been changed or modified by the mutual consent of the parties. Reading section 28 and 77 together (section 42 and 116 of the present Act) the effect is that where the termination of conciliation proceedings results in a settlement, the case is governed by section 28 (3) [corresponding to section 42 (3)] If one of the parties to settlement desires a change in it that change does affect the terms of a settlement for which it must proceed under section 77 (1) which refers to an unilateral act by which a settlement is to be terminated. During

1. In the matter of registration of the agreement dated 22-10-1943 between the Marsden Spinning and Manufacturing Co. Ltd. and the elected representatives of the employees. Bom. Labour Gazette. (Jan. 1945) Vol. 24, Page 301.

the time the settlement remains in force it is open to both the parties to supersede it by another agreement under section 77 (2) (corresponding to section 116 (2) of this Act.) In order to bring about this mutual settlement, the parties may come to a private agreement or one party may proceed by giving a notice of change under section 28 (corresponding to section 42). The latter proceedings might result in agreement before conciliation starts or in a settlement after the conciliation begins. The previous settlement would be deemed to have been modified by subsequent settlement or agreement (see Labour Gazette, January 1945, Page. 303). But in any case it is not open to the parties without arriving at an agreement or settlement to enforce the new change by resorting to strike or lock-out. On failure of these proceeding as the subsisting settlement would remain in force the only way to give effect to the desired change is to give a notice for termination of the settlement, under section 77 (1) (present section 46). Thus where after the conciliation proceedings for changing the terms of a settlement failed, the mills effected the change without following the procedure under section 77 (1) (corresponding to section 116 (1) of this Act), for termination of the settlement, held the change was illegal.[1]

There being a settlement as regards wage rates, the mills gave a notice for increase of hours and the conciliation proceedings were initiated. The workers wanted to reopen the question of wage rates. The conciliator said they could not go into the question unless the settlement regarding wage rates was validly terminated by a notice under section 77 (1) of the Bombay Industrial Disputes Act (corresponding to S. 116 (1) of this Act). Held the conciliator was right.[2]

Contracting out of an award :

It must be noted that sub-section (2) allows only the modification of a registered agreement and settlement by mutual consent and therefore a modification or change in the award even by mutual consent is not allowed. "It is true that there is no express section in the Act in prohibition of any contract by which any rights conferred on the employees under an agreement or an award could be waived by them. There are two sections of the Act, however which read together, prohibit any change in the terms of an award by mutual consent. They are sections 73 and 77 (corresponding to sections 46 and 116 of the present Act). Section 73 (2) (section 46 (3) of the present Act) provides that no employer shall make any change referred to in sub-section (1) (equivalent to sub-section (1) and (2) of section 46 of the present Act) in contravention of the terms of an award. Sub-section (3), (present sub-section (4) of s. 46) provides that any change made in contravention of the provisions of sub-sections (1) and (2) shall be illegal. This has a reference to a unilateral change which is sought to be made by one party to the award namely the employer. The case of bilateral change is provided for under sub-section (2) of section 77 (section 116 (2) of the present Act) which says that nothing in

1. The Jalgaon Girai Kamgar Union Vs. The Khandesh Spinning and Weaving Co. Ltd. Appn. No. 80/1944. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 852.

2. Narayan Krishna Shetty Vs. The Jam Manufacturing Co. Ltd. Appn. No. 6/1945. Bombay Labour Gazette. (Aug. 1946) Vol. 25. Page 934.

that section shall prevent the terms of a registered agreement being changed or modified by the mutual consent of the parties affected thereby. This sub-section is, however, confined to a case of registered agreement (and settlement under this Act). From the fact that sub-section (1) refers to a registered agreement, settlement or award the only inference possible is that the Legislature meant to exclude the case of an award from the operation of sub-section (2). The result therefore is that an award cannot be changed or modified even by the mutual consent of parties thereto. The combined effect therefore of section 73 (2) and section 77 (2) (section 46 (3) and section 116 (2) of the present Act) is that although a registered agreement (and a settlement) can be modified by mutual consent, an award cannot be so modified and if an employer attempts to do so even with the consent of the other party, such an attempt would not only be a change but an illegal change."[1]

Under the Bombay Industrial Disputes Act (so also under this Act) a right conferred to a party under an award cannot be waived by him. Under Section 73 (2) [corresponding to section 46 (3)] no employee can make any change in contravention of the terms of an award. Therefore the non-payment of dearness allowance fixed under the award is illegal even though the employees had waived their right to dearness allowance,[2] or have entered into a specific agreement not to claim it.[3]

Method of modification of an award by mutual consent :

The Industrial Court has held, "An award is by a third party and the third party can always be moved by mutual consent to amend the award as it was in fact done when it was amended in September 1941 (Ahmedabad award, dated 26th April 1946) by increasing the dearness allowance by 45 per cent. by mutual agreement between the parties"[4]

Explanation :

The explanation is new and important and determines who can give notice for terminating a registered agreement, settlement or award. The notice on behalf of the employees can be given by the representative of the employees affected. Who can act as representative of the employees is laid down by section 30.

For the manner of giving notice see rules.

1. The Government Labour Officer Vs. The Anant Mills Co. Ltd. Appn. No. 33/1941 and The Textile Labour Association A'bad Vs. The Harivallabhdas Mulchand Mills Co. Ltd. Appn. No. 42/1941. Bom. Labour Gazette. (Oct. 1941) Vo. 21. Page 153. (F. B)

2. The Amalner Girni Kamgar Union Vs. The Pratap Spinning and Weaving and Manufacturing Co. Ltd. Appn. No. 5/1942. Bombay Labour Gazette. (July. 2942) Vol. 21. Page 1118.

3. Mithi Ratan Vs. The Bhalakia Mills Co. Ltd. Appn. No. 121/1943. Bombay Labour Gazette. (July. 1944) Vol. 23. Page 695.

Hirachand Velsi Vs. The Gujarat Ginning and Mfg. Co. Ltd Appn. No. 39/1945. Bom. Labour Gazette. (Jan. 1946) Vol. 25. Page 341.

4. In the matter of registration of agreement dated 20-10-1943 between the Marsden Spinning and Weaving Co. Ltd. and the elected representatives of the employees. Bombay Labour Gazette. (Jan. 1945) Vol. 24. Page 301.

Liability of the executive of a union.

117. Where anything is required to be done by any union under this Act, the person authorised in this behalf by the executive of the union, and where no person is so authorised every member of the executive of the union, shall be bound to do the same and shall be personally liable if default is made in the doing of any such thing.

Explanation.—For the purposes of this section, the executive of a union means the body by whatever name called to which the management of the affairs of the union is entrusted.

This section corresponds to section 78 of the Bombay Industrial Disputes Act.

Power of certain authorities to summon witnesses, etc.

118. (1) For the purpose of holding an inquiry or proceeding under this Act, the Registrar, a Conciliator, Board, Labour Court in its ordinary jurisdiction, a Court of Enquiry and the Industrial Court shall have the same powers as are vested in Courts in respect of—

(a) proof of facts by affidavits;

(b) summoning and enforcing the attendence of any person and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examinations of witenesses.

(2) The Registrar, a Conciliator or Board shall also have such further powers as may be prescribed.

(3) For the purpose of obtaining the information necessary for compiling and maintaining the record under Chapter XVII the officer authorised under section 112 shall have the powers specified in clauses (b) and (c) of sub-section (1) and in sub-section (2).

This section embodies section 16, section 40 (2) and section 57 (2) of the Bombay Industrial Disputes Act.

Certain officers to be public servants.

119. The Registrar, an Assistant Registrar, a Conciliator, a Labour Officer, an Assistant Labour Officer, an Arbitrator, a member of a Board, an officer authorised under section 112, a Judge of a Labour Court, a member of the Industrial Court or a Court of Enquiry and a member of the staff of any of the said Courts shall be deemed to be public servants within the meaning of section 21

XLV of 1860. of the Indian Penal Code.

This section corresponds to section 80 of the Bombay Industrial Disputes Act.

Provisions of act VII of 1929 not to be affected.

120. Nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929, and no conciliation or arbitration proceeding shall VII of 1929 be held under this Act relating to any matter or trade dispute which has been referred to and is pending before a Court of Enquiry or Board of Conciliation under the said Act.

This section corresponds to section 82 of the Bombay Industrial Disputes Act.

Repeal of Bom. IX of 1934.

121. The Bombay Trade Disputes Conciliation Act, 1934 shall cease to apply in a local area to any industry in respect of which the Bom. IX of 1934 provisions of this Act have been brought into force in such local area.

This section corresponds to section 83 of the Bombay Industrial Disputes Act.

Repeal of Bom. XXV of 1938.

122. The Bombay Industrial Disputes Act, 1938, is hereby repealed: Bom. XXV of 1938

Provided that—

(a) every appointment, order, rule, regulation, notification or notice made, issued or given under the provisions of the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have made or issued under the provisions of this Act, unless and until superseded by any appointment, order, rule, regulation, notification or notice made, issued or given under this Act;

(b) any standing order settled, agreement registered, changes which have come into operation, settlements recorded or registered, submissions registered, awards made or orders passed by the Industrial Court, under the provisions of the Act so repealed shall be deemed to have been settled, registered, to have come into operation, to have been recorded, made or passsed by the appropriate authority under the corresponding provisions of this Act;

(c) any right, privilege, obligation or liabity acquired, accrued

or incurred under the Act so repealed shall not be affected and any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability shall, so far as it is not inconsistent with the provisions of this Act, be made, instituted and availed of as if the said Act had not been repealed and continues in operation;

(d) any proceedings pending before the Industrial Court, conciliation proceedings, or any proceedings relating to the trial of offences punishable under the provisions of the Act so repealed shall be continued and completed as if the said Act had not been repealed and continues in operation; and any penalty imposed in such proceedings shall be recorded under the Act so repealed;

(e) a registered union or a Representative Union or a Qualified Union or other representatives elected, entitled to appear or act as the representatives of employees under the Act so repealed shall, notwithstanding the repeal of the said Act, continue to act as the representatives of employees in any proceedings under this Act for a period of three months from the date on which this Act comes into force.

This section is new and by it the Bombay Industrial Disputes Act is repealed but the provisos are very important and practically save everything that was done under that Act or was pending at the time of coming into force of this Act.

Under proviso (1) all appointment orders, rules, regulations, notifications or notices made, issued or given under the Bombay Industrial Disputes Act are to be deemed to be made, issued or given under this Act in so far as they are not inconsistent with this Act.

Under proviso (b) all the standing orders, agreements, changes, settlements, submissions and awards and orders under that Act in so far as they are not consistent with this Act are saved and are valid as settled, registered or made under this Act.

Proviso (c) lays down that all rights, privileges, obligations and liabilities acquired, accrued or incurred under the Bombay Industrial Disputes Act are not affected and may be enforced.

Proviso (d) lays down that all the pending proceedings shall be completed in accordance with the provisions of the Bombay Industrial Disputes Act.

Proviso (e) lays down that the persons entitled to act as representatives of employees shall continue to be so entitled for a period of 3 months from

the coming into force of this Act.

Rules.

123. (1) The Provincial Government may by notification in the *Official Gazette* make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision such rules may be made for all or any of the following matters, namely:-

(a) the authority to be prescribed under sub-clause (c) of clause (14) of section 3;

(b) the manner in which the panels representing the interests of employers and employees shall be consituted and the manner in which vacancies in the Board of Conciliation shall be filled up under section 7;

(c) the qualifications for being eligible to be appointed to preside over Labour Courts under section 9;

(d) the form in which the registers of unions and the approved list shall be maintained under section 12;

(e) the form of application under sub-section (1), (2) and (3) of section 13;

(f) the fee to be paid, and the form of certificate of registration to be issued, under section 14;

(g) the fee to be paid under sub-section (1), and the manner of publication under sub-section (4), of section 16;

(h) the fee to be paid under sub-section (1) of section 17;

(i) the dates on which and the manner in which returns shall be submitted under section 19;

(j) the manner of publication of orders under section 21;

(k) the manner of registration of a union for more local areas than one under section 22;

(l) the form of application under section 23;

(m) the officers to be authorised under section 25 and the manner in which and the conditions subject to which the rights under that section shall be exercised;

(n) the fees to be prescribed under sub-section (6) of section 26;

(o) the authority to be prescribed under clause (b) of sub-section (2), and the manner of determining the representative of employees under sub-section (3), of section 27;

(p) the manner in which the persons shall be elected under sub-section (1), recalled under sub-section (4), the period for which and the manner in which they shall function and the manner in which vacancies shall be filled under sub-section (5) of section 28;

(q) the manner of authorising a Qualified or Primary Union under clause (iii) of, the manner of accepting the terms of an agreement or settlement under proviso *Secondly* and the number of representatives and the manner of their election under proviso *Thirdly* to, section 30;

(r) the conditions subject to which the powers of entry and inspection shall be exercised under sub-section (2) of section 34;

(s) the manner of submission of draft standing orders under sub-section (1), and the manner of consulting the representative of employees and other interests under sub-section (2), of section 35;

(t) the form of notice and the other persons to be prescribed under sub-sections (1) and (2), and the manner of approach and the period to be prescribed under the proviso to sub-section (4), of section 42;

(u) the other persons to be prescribed under sub-section (3) of section 43;

(v) the manner of forwarding the memorandum of agreement under sub-section (1) of section 44;

(w) the manner of nomination of members by the union under sub-section (1), the appointment of the chairman and manner in which he shall perform his duties under sub-section (2), of section 49;

(x) the manner of conducting the proceedings of a Joint Committee under sub-section (2) of section 50;

(y) the manner in which the memorandum of agreement shall be forwarded under sub-section (1), the form in

which a special intimation shall be forwarded under sub-section (2), the other persons to be prescribed under sub-section (4), of section 52;

(z) the form in which the statement shall be forwarded under sub-section (1) of section 54;

(aa) the manner of holding conciliation proceedings under sub-section (1) of section 56;

(ab) the form in which the memorandum of settlement shall be drawn up, and the manner of its publication under sub-section (1) of section 58;

(ac) the manner of giving notice under sub-section (2) of section 59;

(ad) The procedure to be followed by a Conciliator or Board under sub-section (1) of section 60;

(ae) the manner of publication of a submission under sub-section (3) of section 66;

(af) the modifications to be prescribed under sub-section (2) and the manner of making the employers parties to arbitration under sub-section (3), of section 72;

(ag) the manner of publication under sub-section (2) of section 74;

(ah) the form and manner in which an application shall be made under sub-section (2) of section 79;

(ai) the manner in which the record shall be a maintained under section 111;

(aj) the conditions to be prescribed under sub-section (1) of section 112;

(ak) the manner of giving notice under section 116;

(al) the further powers of the Registrar, a Conciliator or Board under sub section (2) of section 118;

(am) any other matter which is required to be or may be prescribed.

(3) The rules made under this section shall be subject to the condition of previous publication in the *Official Gazette*.

This section corresponds to section 84 of the Bombay Industrial Disputes Act.

SCHEDULE I.

(Section 35)

1. Classification of employees, e. g., permanent, temporary, apprentices, probationers, badlis, etc.

2. Manner of notification to employees of periods and hours of work, holidays, pay days and wage rates.

3. Notice to be given to employees of starting, alteration or discontinuance of two or more shifts in a department or departments.

4. Closure or reopening of a department or a section of a department or the whole of the undertaking.

5. Attendance and late coming.

6. Leave: conditions, procedure and authority to grant.

7. Holidays: procedure and authority to grant.

8. Liability to search and entry into premises by certain gates.

9. Temporary stoppages of work, including playing off, and rights and liabilities of employers and employees arising therefrom.

10. Termination of employment: notice to be given by employer and employee.

11. Suspension or dismissal for misconduct, suspension pending inquiry into alleged misconduct and the acts or omissions which constitute misconduct.

12. Means of redress for employees against unfair treatment or wrongful exaction on the part of the employer or his agent or servant.

SCHEDULE II.

(Section 42)

1. Reduction intended to be of permanent or semi-permanent character in the number af persons employed or to be employed in any occupation or process or department or departments or in a a shift not due to *force majeure*.

2. Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments.

3. Dismissal of any employee except as provided for in the standing orders applicable under this Act.

4. Rationalisation or other efficiency systems of work.

5. Starting, alteration or discontinuance of shift working otherwise than in accordance with the standing orders applicable under this Act.

6. Withdrawal of recognition to unions of employees.

7. Withdrawal of any customary concession or privilege or change in usage.

8. Introduction of new rules of discipline or alteration of existing rules and their interpretation, except in so far as they are provided for in the standing orders applicable under this Act.

9. Wages including the period and mode of payment.

10. Hours of work and rest intervals.

For the comments under Schedule II, see comments under section 46.

SCHEDULE III.

(Section 42)

1. Adequacy and quality of materials and equipment supplied to the workers.

2. Assignment of work and transfer of workers within the the establishment.

3. Health, safety and welfare of employees (including water, dining sheds, rest sheds, latrines, urinals, creches, restaurants, and such other amenities.)

4. Matters relating to trade union organization, membership and levies

5. Construction and interpretation of awards, agreements and settlements.

6. Employment including—

(i) reinstatement and recruitment;

(ii) unemployment of persons previously employed in the industry concerned.

7. Payment of compensation for stoppages.

COMMENTS.

SCHEDULE III is new and any employee desiring a change in an industrial matter specified in this schedule may make an application to the Labour Court. See sections 42 (4) and 78 (1) (A) (a) (iii).

SCHEDULE III : ITEM 2 :

Under the Bombay Industrial Disputes Act it was held that it is not open to a worker to refuse work in a different KHATA unless the change involved an alteration in his status or a decrease in wages. The burden of proving that the change involved an alteration in his status or decrease in wages was on him.[1]

Transfer from one machine to another :

Nor is there a privilege of a worker to claim to work on a particular machine. The employer does not commit an illegal change or violates standing orders by asking a worker to work or not to work on a particular machine. The same

---

1. Syed Fidalli Kasamalli Vs. The National Mills Co. Ltd. Appn. No. 43/1943. Bombay Labour Gazette (Dec. 1943) Vol. 23. Page 268.

wages are paid to a worker whether he works on machine A or machine B and as long as wages remain the same and the method of work remains the same there is no illegal change.[1]

Under this Act the transfer from one department to another falls or from one machine to another falls under item, (a) of Schedule II and an operative aggrieved by such transfer may apply to the Labour Court under Section 42 (4) and section 78 (A) (iii).

Item 6 :

Under sub-clauses (i) and (iii) of section 78 (1) (A) (a) the Labour Court has the power to decide disputes regarding the propriety of legality of the orders passed by the employer under the Standing Orders and to decide disputes regarding any change in respect of an Industrial Matter specified in Schedule III and under section 78 (1) (C) to carry out any change which is matter in issue. So questions whether an employee has been properly discharged or dismissed under the Standing Orders and whether he should be reinstated or not, fall to be decided by the Labour Court under this Act. In fact numerous cases of this nature will come before it. Under the Bombay Industrial Disputes' Act, the Court has no powers to see to the propriety of any order passed by the employer or to order reinstatement of any dismissed or discharged employee. This power to decide the propriety of the order passed under the Standing Orders and to order reinstatement is new. But then, what are the principles on which the Labour Court will decide the propriety of a discharge or dismissal and order reinstatment ? No such principles have been laid down in the Act to guide the Courts. But there is a recent award of Sir Harsidhabhai Diwatia, the President of the Industrial Court in which the questions of the propriety of the discharge of employees and the principles governing the reinstatement of such employees have been very ably discussed. Though the award was given by Sir. H. Diwatia in his personal capacity and therefore it has not the binding force of a decision of the Industrial Court. Yet, coming as it does from no less a person than the President of the Industrial Court and because of the very able discussion of the principles involved, it carries great weight and will probably be ranked as a leading authority in this respect. The facts of the case were that the monthly paid staff of the mills company formed a union of which one Mr. Bhimji, an engineer in the employment of the company was elected the vice-president. Some time thereafter Mr. Bhimji was all of a sudden discharged with one month's pay in lieu of notice. The members of the union went on a strike as protest. Ultimately the dispute was referred to the arbitration of Sir H. Diwatia. Out of the 800 employees who went on strike 89 had been discharged on the alleged grounds of leaving work without notice, for illegal strike and for giving threats of intimidation. The questions to be decided were whether Mr. Bhimji was properly discharged or not, whether all or any of the employees were properly discharged or dismissed and whether they

1. Bai Kanku Jivi Vs. The Shree Anand Cotton Mills, Ahmedabad. Application. No. 77/1945. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 844.

should be reinstated.[1]

Difference between civil law and principles governing industrial relations :

Over-ruling the contention on behalf of the mills that there is no law compelling the employer to retain an employee against his will, the learned Arbitrator observed, "It is true that according to Civil Law governing master and servant, it is open to the master to discharge a servant with proper notice or to dismiss him for a proper cause. Even in the case of a discharge without notice or a wrongful dismissal, the servant is entitled to damage but not to reinstatement. It is well known that specific performance of a contract of service cannot be granted by a Civil Court. If therefore, this dispute is to be decided by a Civil Court no relief for reinstatement could be granted even if the discharge is held to be illegal. But although no relief could be obtained in a court of law both the parties to the present dispute have expressly referred the questions of improper discharge and reinstatement for arbitration and they have agreed to be bound by the award. It is therefore not only open but incumbent on me to decide these questions according to the principles governing industrial relations between the employers and employees, in absence of any statutory law. There is also the Bombay Industrial Relations Bill which has been passed by both the houses of Legislature in Bombay and awaiting the assent of the authorities in which provision has been made for relief of reinstatement in cases of improper discharges or disuissals, the compulsory recognition of certain kinds of unions and penalty against victimisation of the employee for joining a Trade Union. That law is however confined to clerks and menials and will not apply to higher employees. In the present case the discharged or dismissed employees are clerks, technicians and officers. However the Trade Unions Act of 1926 applies to all workmen without any distinction and thus includes what is known as the white collered class and any recognised Union of these employees will have a right to negotiate with the employers. These two measures—the proposed amendment in the Trade Unions Act and the Bombay Industrial Relations Bill—clearly show that the time has come in India when legitimate Trade Union activities and protection against 'unfair labour practices' by the employers have come to be recognised as fundamental principles of industrial relations. They have now been firmly recognised in Europe, America and Australia and their application to India which is now rapidly becoming one of the leading industrial countries in the world can no longer be disputed."[2]

Established principles in industrial relations :

In England the Trade Unions have come to be recognised as a part of the industrial system to such an extent that collective bargaining has become a normal feature of industrial relations British Trade Union officers have not faced the problem of opposition to Trade Unionism or discrimination against workmen because of their membership (Industrial and Labour Relation in Great Britain by Gannett and Catherwood, page 335). The practical sense of the

1. In the matter of a dispute between The India United Staff Union and The India United Mills Limited, Bombay Labour Gazette, (Jan. 1947) Vol. 26 Page 335.
2. Ibid.

leaders of capital and labour is fully wanting in the United States. As one American writer observes, "The industrial friction which flares up so prominently has been due principally to the employers' opposition to the acceptance of Trade Unionism as a definite part of the industrial system". It is for this reason that after a long and bitter struggle between Capital and Labour, the Federal Legislature of the United States had to enact a law in 1935 known as the National Labour Relations Act which recognises the two fundamental rights of labour, viz., to organise and to strike. Thus the Act among other things empowers the National Labour Relations Board to order any person engaged in 'unfair labour practice' to desist from it and to take affirmative action including the reinstatement of employees. There have been a large number of decisions under this Act of the Board and also some important judgments of the Supreme Board of the United States. The principles laid down may be summarised as follows:-

1. It has been held that the Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. (Ludwig Teller : 'Labour Disputes and Collective Bargaining.' Vol 2, page 828).

2. As regards the burden of proof in cases of discharge it has been held "A strong inference would be drawn and is drawn by the Board from the fact that an employee has been discharged either immediately or shortly after the affiliation with the Union or his election to Union Office." (Herbert A. Lien; "Labour Law and Relations", page 132).

3. In cases of discrimination in discharge, it has been held. "Where an entire group of men are subjected to discriminatory treatment in connection with reinstatement, the burden is upon the employer and not upon the Board to show which of the employees would not have been normally recalled." (Teller; Vol 2 page 833).

4. A discharge, of an employee for stoppage of work in protest over the discharge of an union leader has been held to be discriminating. (Teller: Vol. 2. page 830).

5. Striking employees retain their status as employees under the Act in two situations : first, where they strike in connection with a current labour dispute; second; where the strike is the result of an unfair labour practice.

6. Where a strike is provoked by the employer on account of "unfair practice" by him, and even though such strike may be in violation of law or carries criminal penalties, the strikers are entitled to the protection of the Act and can ask for reinstatement. The Supreme Court has held, "Even

assuming that the strikers' conduct was violative of certain State Laws carrying criminal penalties we cannot say that the respondent therefore is guilty in any lesser degree. One who engages in persistent and open defiance of a national law cannot be heard to assert that the retaliatory conduct of his employees in seeking to secure their rights is necessarily a bar to their reinstatement". (Lien; page 166).

7. As regards misdemeanours by the strikers, the principle of reinstatement is thus summarised :—

(a). The employees have a right to continue as employees if no serious injury to person or property is involved and if the offence is considered and treated as a very minor one by the properly constituted local authorities (Lien: page 169). Unlawful acts which are felonies or serious misdemeanours are a bar to reinstatement, unless the alleged unlawful acts are never tried or the employer takes no disciplinary action in regard to the acts or disregards such acts as to some of the strikers while insisting upon emphasizing them in connection with others or where the employers' resort to violence has been so extreme as to call forth like violence from the employees (Teller: Vol. II, pages 853-54.)

(b) In case of serious offences reinstatement is with-held but where the misconduct whether in reinstating persons equally guilty with those whose reinstatement is opposed, or in other ways, gives rise to the inference that union activities rather than misconduct is the basis of his objection, the Board has usally required reinstatement. (Teller : Vol. II, pages 852-53).

(c) It has been held, "A brawl or fist fighting between union or non-union employees is no bar to reinstatement. But engaging in serious assault and battery or threatening to burn the plant or filing a baseless charge (against a superintendent) for assault and battery with intent to kill, have been considered bars to reinstatement" (Teller Vol. II, pages 855-57.).

(d) Peaceful picketing and persuading other employees to join the strike are allowed and are not regarded as bars to reinstatement.[1]

In Australia it has now been the settled law that persons who were driven out of employment because they were engaged in legitimate union activities are entitled to be reinstated. (Commonwealth Arbitration Reports, Vol. 46, Part II, page 422). In one case where some of the striking employees were not employed while others equally culpable strikers were reinstated it was held that, "A position such as one which has developed in this case is one

1. Ibid.

which a body of employees may reasonably regard as a legitimate grievance and one which is likely to engender feeling of hostility and discontent" (vide Commonwealth Arbitration Reports. Vol. 53 part 111 page 576).[1]

"The above principles of industrial relation are so well recognised in industrially advanced countries that they have come to be regarded as fundamental principles of labour relations. Of course they are confined to cases of improper discharge as violating the fundamental priciples of right to organise and to strike, arising out of "unfair labour practices" by the employers. Every employers has a large discretion in discharging or otherwise punishing his employees for inefficiency, negligence, dishonesty, insubordination or misconduct so long as that is done in good faith and without any ulterior motive, arbitrary conduct or unnecessary harshness his discretion will not be interfered with. (Lien : page 142). But the position would be different when the employees' conduct is provoked by the unfair labour practice of the employer himself. It is only in such cases that the principles discussed above would have application."[2]

Following the aforesaid principles it was held by Sir Harsidbbhai that, (1) though the strike of the employees to whom the Bombay Industrial Disputes Act appliesd was illegal, the irregularity or illegality of the strike did not affect the propriety or otherwise of their discharge or dismissal if the strike was provoked by the company by resorting to unfair labour practice and as the strike took place because of the unfair labour practice of the company it was not entitled to discharge or dismiss these employees as a disciplinary measure for going on a strike without a notice even though some of them were holding responsible positions. (2) So also persuasion and even minor threats would not affect the right of the employees to reinstatement if they were improperly discharged as the strike was provoked by the company. The only ground in favour of the discharge would be serious misconduct or violence to person or property.

So out of the total 89 employees discharged two employees—one who was proved to have tampered with telephone apparatus and the other who caused serious injuries to a worker by throwing an electric bulb—were held to be not entitled to reinstatement while the others were ordered to be reinstated. Mr. Bhimji was held to be discharged because he was the vice president and a prominent leader of the union. Therefore his discharge amounted to unfair labour practice and so his reinstatement was also ordered.

---

1. Ibid. 2. Ibid.

Item 7 : Payment of compensation for stoppages :

For discussion on this topic see comments under standing order no. 16 for operatives.

ERRATA AND CORRIGENDA.

Page.	Line.	
1	30	Add 'and certain other industries' after 'textile industry'.
2	33	Substitute 'principal' for 'principle',
3	28	Substitute 'statute' for 'status'.
4	Foot note (2).	Substitute 'Maxwell' for 'Maxhull'.
5	20	Substitute 'Park' for 'Pork'
7	Foot note (2).	Substitute 'Hattersley' for 'Hathesing'.
7	19	Substitute '3 (14)' for '3 (11)'.
9	20	Substitute 'conferred' for 'confirmed'.
10	7	Add 'no' after 'there was'.
16	5	Add 'a distinction between' after 'contemplates'.
19	Foot note (5).	Substitute '1947' for '1247'
33	14	Add 's' after the word 'occupation'.
43	2	Add 'to be entered' after word 'apply'.
49	33	Delete 'not' after 'could'.
50	31	Add 'or' after 'members'.
55	17	Add 's' after 'change'.
55	30	Add 'to' after 'appeal'.
75	6	Delete 'sect 46'.
79	19	Add 'an illegal' after 'constitutes'
81	5	Add 'a' after 'result'.
83	15	Substltute 'Schedule III' for 'Schedule II.'
83	26	Add 'not' after 'is'.
85	9	Substitute 'in the Factories Act' for the 'factories'.
89	4	Substitute 'on' for 'in'.
90	9	Substitute 'coarse' for 'course.'
90	28	Substitute 'terms' for 'term.'
123	6	Substitute '78' for '79'.
130	9	Substitute 'Under section 79 (1) an application for deciding a Strike, lock-out or change to be illegal' for the words 'Under Section 78 (1)...It.'
130	27	Substitute '83 of this Act' for '5 (2) thereof'.
134	7	Substitute '88 (2)' for '89 (2)'.
141	20	Add 'or' after 'concerted'.
152	24	Substitute 'contended' for 'continued.'
157	13	Add "Under this Act the application for declaring a strike to be illegal must be made within three months (S. 79 (4))" after the word 'strike is over'.

Page.	Line.	
167	30	Substitute '103' for '153'.
167	Foot note after '1944 Bombay 122'. substitute '=' for '/'	
184	32	Delete 'in so far as they not consistent with the Act'.
191	5	Substitute 'item (2) of Schedule III' for '(a) of Schedule II.
191	7	Substitute 78 (1) (A) (a) (iii) for '78 (A) (III).'
191	9	Substitute 'or' for 'of'.
191	40	Substitute 'or' for 'of'.
192	9	Add 's' to 'damage'.
193	35	Add 'labour' after 'unfair'.